

# Law 18,840 Basic Constitutional Act of the Central Bank of Chile (1)

- (1) Contained in ARTICLE ONE of Law 18,840, published in the Official Gazette on 10 October 1989. It includes the amendments introduced by Laws 18,901, 18,970, 19,041, 19,653, 19,705, 19,746, 19,806, 19,913, 20,000 and 20,088 published in the Official Gazette on 6 January 1990, 10 March 1990, 11 February 1991, 14 December 1999, 20 December 2000, 9 August 2001, 31 May 2002, 18 December 2003, 16 February 2005 and 5 January 2006, respectively.

## Title I: Nature, Purposes, Capital and Domicile

**Section 1.** The Central Bank of Chile is an autonomous entity of technical nature created in accordance with constitutional provisions, has full legal capacity, possesses its own assets and has an indefinite duration. The present Act regulates its organization, structure, duties and authority. Whenever the expression "Bank" is herein used, it shall be understood to mean the entity to which this Section refers.

The Bank shall have its domicile in the city of Santiago and shall have the authority to open and close agencies, offices and branches within or outside the territorial jurisdiction of the Republic.

**Section 2.** The Bank shall, with regard to its duties and authority, be governed exclusively by the provisions of this Act and it shall not be bound for any legal purposes, by provisions present or future, general or special, enacted for the public sector. In the absence of regulatory provisions and provided the matter is within the scope of the Banks's duties and authority, provisions regulating the private sector shall apply.

The authority granted to the Bank by law shall not be exercised in a manner which, directly or indirectly, may result in the establishment of regulations or requirements different or discriminatory to any person, institution or entity conducting business of similar nature.

**Section 3.** The Bank shall have as its purposes to look after the stability of the currency and the normal functioning of the internal and external payment systems.

The authority of the Bank, for these purposes, shall include that of regulating the amount of currency and credit in circulation, the performance of credit transactions and foreign exchange, as well as the issuance of regulatory provisions regarding monetary, credit, financing and foreign exchange matters.

**Section 4.** The Bank shall inform the President of the Republic and the Senate with regard to the policies and regulations of general applicability issued by the Bank in the performance of its duties. Likewise, it shall advise the President of the Republic, upon his request, in all matters within the scope of its duties.

**Section 5.** The initial capital of the Bank shall be the amount of \$ 500,000,000,000 (five hundred billion pesos). The capital may be increased by decision of the majority of the Council members, through capitalization of reserves and adjusted by means of monetary correction.

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The Bank shall, by justified decision of the majority of the Council members, be entitled to request from the Minister of Finance the increase of its capital or the making of specific contributions to its assets on account of funds to be appropriated under the Nation's Budget Act.

## **Title II: Supervision and Administration**

### **Subtitle One: The Board**

**Section 6.** The supervision and administration of the Bank shall be vested in the Board of the Central Bank, which shall be responsible for the exercise of the authority and the carrying out of the duties entrusted to the Bank by law. Whenever the expression "Board" is herein used, it shall be understood to mean the body to which this Section refers.

When passing its resolutions, the Board shall consider the general orientation of the Government's economic policies.

**Section 7.** The Board shall be composed of five Members appointed by the President of the Republic, with the prior approval of the Senate, by means of an executive decree issued through the Ministry of Finance.

**Section 8.** The Board Members shall remain in office for a term of ten years and their appointments may be renewed. Replacement shall be in a staggered fashion every two years. The Chairman of the Board, who shall also be the Governor of the Bank, shall be appointed by the President of the Republic from among the Board Members for a five year term or until the expiration of such Member's term in office, whichever comes first. His appointment may be renewed.

**Section 9.** The Board shall elect from its Members the person who shall be the Vice-Governor of the Board and Vice-Governor of the Bank. The Vice-Governor shall remain in office for a term established by the Board or until the expiration of his term in office, whichever comes first. His appointment as such may both be renewed and revoked by the Board.

**Section 10.** Compensation for the Governor, the Vice-Governor and the Board Members shall be set forth by the President of the Republic for periods not to exceed two years. For such purposes, the President of the Republic shall appoint, with the anticipation as may be necessary, a Committee formed by three persons who are former Governors and Vice-Governors of the Bank, who shall present a compensation proposal based upon the salaries being paid by the private sector banking institutions to their top executives.

**Section 11.** The Board shall meet with at least three of its Members attending and its resolutions shall be deemed adopted with a favorable vote of the majority of the attending members, unless a qualified majority is required by this Act. In the event of a tie, the Member presiding shall have the casting vote. The Board shall hold ordinary meetings at least once a week, and extraordinary meetings whenever specifically convened by its Governor either at his own initiative or at the written request of at least two Members. Upon such a request, the Governor shall not refuse to convoke the meeting and the respective session shall take place within the three banking days following the request to which this subparagraph refers. With the favorable vote of at least three of its Members, the Board shall issue the internal regulations necessary for both its appropriate functioning as well as that of the Bank. The amendment of the regulations shall be made also with the favorable vote of three of its Members. All resolutions adopted by the Board shall be recorded in the minutes of the respective session.

**Section 12.** In the event of vacancy, absence or incapacity to perform his duties, the Governor shall be substituted by the Vice-Governor and, in the absence of the latter, by the Member who comes next in order as established by the Board. If said order has not been established, the substitution shall be made by the members in order of seniority. Should a position of Board Member become vacant, the appointment of a new Member shall be made in the manner indicated in Section 7, his term being only the remaining term of the substituted member. Should the position of the Governor become vacant, the appointment of a new Governor shall take place in accordance with Section 8 for the corresponding term as established by the second paragraph of that Section. Should the position of Vicegovernor become vacant, the Board shall make the corresponding appointment in accordance with the provisions of Section 9.

**Section 13.** The Members of the Board shall be precluded from intervening or voting on resolutions concerning credit transactions, investments or other business in which he, his spouse, or his relatives up to the third degree of consanguinity or second degree of affinity, both inclusive, may have an interest of a commercial nature. The prohibitions of this Section shall not apply with regard to resolutions intended to produce effects of general applicability. In the event that any of the above situations should arise, the Member concerned shall not count for purposes of determining the respective quorum.

**Section 14.** The position of Board Member shall not be compatible with any position or service rendered in the private sector, whether or not for compensation. However, Board Members shall be entitled to perform duties either in public or private non-profit institutions and foundations, provided no compensation is derived therefrom. The position of Board Member shall similarly not be compatible with any position or service paid out of state or municipal resources or with duties, whether or not paid, as Board Member, director or employee of directly or indirectly controlled state-owned institutions, state owned autonomous entities, state enterprises and, generally, any public agency created by law, as well as enterprises, corporations or institutions, either public or private, whereby the state, its enterprises, corporations or institutions whether or not under its centralized management, may have equal or majority control capital investments or, in the same proportion, representation or participation. Likewise, said office shall be incompatible with the participation in the ownership of banking enterprises and financial companies. For the purposes of this incompatibility, if the Board Member were married under the marital community regime, the holdings of the spouse shall also be considered, with the exception of those acquired with funds pertaining to its personal net worth in accordance with the provisions of Section 150 of the Civil Code; as well as those of minor children under paternal custody of those persons and of the companies in which any of them may have a participation in the capacity as controller. Should the Board Member, his (her) spouse or minor children under paternal custody acquire said participation through inheritance or other gratuitous manner, those shares must be disposed of within the period of 30 days counted from the date in which that disposal may be effected (1).

The incompatibilities established under this Section shall not apply to professorships or academic duties. They shall similarly not apply whenever the laws require that a Board Member must sit on a specific council or board of directors, in which case they will not be entitled to any payment whatsoever for the performance of those other duties.

The Board Members, prior taking office, shall have to state under oath and by means of an instrument filed with a notarial office of the domicile of the Bank, an account of their patrimonial situation, the professional and economic activities in which they participate and the circumstance of not being affected by the incompatibilities indicated above. The sworn statement shall have to be effected in the terms indicated above, with the same formalities, at the time they leave office. Without prejudice to what was pointed out in Section 90, in this case, Sections 60B, 60C and 60D and the second paragraph of Section 61 of Law 18,575, Organic Constitutional Act on the General Basis for the Administration of the State, shall be applicable, acting the Vice-Governor of the

Bank as certifying officer and depositary, who shall provide copy to whoever requests it at the expense of the petitioner. (2-3).

**Article 14 bis** No person dependent on illegal narcotic drugs or substances shall occupy the position of Council member, unless that person justifies such consumption is for the purpose of medical treatment. Prior to taking office, the Council member shall file a sworn declaration that (s) he is not affected by this incompatibility. (4)

**Section 15.** In the event that any of the Board Members infringes the provisions of Section 13 hereof or behaves in a manner that constitutes an abuse of his capacity as such with the purpose of obtaining direct or indirect benefits for himself or for third parties, an accusation may be brought against him to the Court of Appeals of Santiago, which shall render its decision through one of its chambers and in final instance as to whether such infringement or abuse has actually been incurred. The Court may ordain such measures as it may deem appropriate in order to become better acquainted with the facts of the case.

Same accusation may be filed against the Board Members who include inaccurate information or without justification omit material information in the statement required in accordance with the provisions of the final paragraph of Section 14 (5).

The accusation, which shall be justified and filed by the President of the Republic or by the Chairman of the Bank or by at least two Council members, shall be given priority for its study and decision and the sentence shall be passed upon within the period of thirty working days counting from the date in which hearings were conducted.

While the decision is pending, the Court shall have the authority to issue an injunction temporarily restraining the Member accused from the exercise of his duties within the Board.

Once the judgment declaring the occurrence of the infringement or abuse has become definitive, the concerned Board Member shall cease immediately in his duties, and the Court of Appeals shall remit the proceedings to the appropriate court for the initiation of the corresponding civil or criminal actions. The Board Member ceasing in his duties pursuant to the provisions of this Section may not be appointed again in the same capacity.

**Section 16.** The President of the Republic may remove the Board Member acting as Governor of the Board and Governor of the Bank upon a justified request of at least three of its members on the grounds of non-compliance with the policies adopted or the regulations issued by the Board. The President of the Republic shall proceed with the above mentioned removal with the prior approval of the Senate, which shall be requested within the thirty day period counting from the date of the request referred to in the preceding paragraph. Should the removal be approved by the Senate, the President of the Republic shall make a new appointment in accordance with the provisions of Sections 7 and 8 of this Act, for the balance of the term of the member so dismissed. The person being removed from the position of Governor of the Board and from office in the capacity as Board Member pursuant to the provisions of this Section may not be appointed again as such during ten years following dismissal.

**Section 17.** The President of the Republic by justified reason and the prior approval of the Senate may remove any or all of the Board Members. The dismissal may only be based upon the grounds that the concerned Board Member has voted in favor of Bank resolutions representing a material and clear breach of the purposes of the Bank as specified in the first paragraph of Section 3, and provided that said resolution has been the main and direct cause of a material damage to the economy of the country.

The Board Member or Members concerned shall have the right of a hearing before the Senate.

The person being removed from office as Board Member pursuant to the provisions of this Section may not be appointed again as such during a term of ten years following dismissal.

**Section 18.** The Board shall be responsible for the following:

1. Exercise the authority and perform the duties entrusted to the Bank by law;
2. Establish the general policies of the Bank, issuing the regulations of general applicability to which the Bank shall conform its transactions, and exercising the supervision and control of same. In order to accomplish the latter, the Board shall appraise the compliance with the policies and regulations of general applicability issued and the performance of the transactions and activities of the Bank;
3. Approve the internal regulations for the staff of the Bank, determine the administrative and personnel structures of the Bank, set the compensation and any other allowances or benefits to the staff members of the Bank;
4. Appoint, accept resignations and terminate the working contracts of the General Manager, the General Counsel and the General Auditor of the Bank where by the majority vote of all Board Member shall be required;
5. Appoint the person who shall substitute for the General Manager, the General Counsel and the General Auditor of the Bank in the event that, due to absence, vacancy or any other reason, they may be prevented from performing their office. No evidence of the reason for substitution shall be necessary to be given to third parties;
6. Appoint, accept resignations and terminate the working contracts of persons who, in accordance with the Internal Regulations for the Staff of the Bank, may have the rank of higher employees and of persons whose duties include authenticating the acts of the Board and of the Bank and who need to be a lawyer and whose appointment needs to be published in the Official Gazette;
7. Open or close agencies, offices or branches within the country or abroad;
8. Determine the days which will be the working days of the Bank and the hours in which the bank will be open for business to the public, both of which shall be published in the Official Gazette;
9. Approve or reject every year the financial statements of the Bank and decide upon the write offs and reserves as may be appropriate;
10. Delegate certain administrative and operational authority upon the Governor, the Vice-Governor, a Board Member, the General Manager, the General Counsel and other Bank officials and, in specific cases, grant special powers to third parties, establishing the compensation to be paid to the latter.

**Section 19.** The Minister of Finance shall have the right to attend the Board meetings, with the right to be heard. The Minister shall be normally informed in advance and in writing of all Board meetings convened, as well as of the agenda.

During any meeting attended, the Minister may suggest to the Board either orally or in writing, the adoption of specific resolutions which the Board shall deal with at the following meeting. To this end, the Board shall include such proposals on the agenda of such following meeting.

At any meeting attended, the Minister shall have the right to suspend the applicability of any decision or resolution passed by the Board for a period not to exceed 15 days, counting from the date of such meeting, provided that, if all Board Members insist upon the application thereof, such suspension shall have no effect. In the event of suspension of applicability of any Board decision or resolution pursuant to the above provisions, the Minister may request the Governor of the Bank, with sufficient anticipation and while the suspension period is still in effect, to convoke an extraordinary meeting of the Board to deal with the matter that is the subject of the suspension measure, which the Governor may not refuse to convoke and which shall take place within three business days following the request referred to above.

In the absence of the Minister of Finance, Board meetings may be attended by the Undersecretary of Finance for the purpose of informing the Minister of the matters been disposed of.

**Section 20.** The Board shall have the authority to hold meetings and adopt valid decisions, regulations and resolutions in places other than the domicile of the Bank, provided they are situated within the territory of the Republic. In such event, the attendance of all of the Board Members shall be required. If such meeting is not attended by all of the Board Members, the fact that the absent Members were duly notified shall be recorded in the minutes thereof.

**Section 21.** Board Members shall be under no obligation to appear in court but in accordance with the provisions of Sections 361 and 389 of the Code of Civil Procedure and Sections 300 and 301 of the Code of Criminal Procedure (6).

## **Subtitle Two: The Governor, Vice-Governor, General Manager, General Counsel and General Auditor.**

**Section 22.** The Governor shall be responsible for conducting the relations of the Bank with public authorities and with domestic, foreign, or international banking and financial institutions. Without prejudice to other responsibilities entrusted to him by law, his duties shall specifically be:

1. Carry out and enforce the regulations and resolutions adopted by the Board;
2. Preside over the Board meetings and convene the extraordinary meetings whenever appropriate;
3. Inform the Board at least once a month or at the request of any of its Members, about the enforcement of policies and regulations of general applicability issued by such body and give an account on the functioning and performance of the Bank. In addition, once a month he shall deliver a report to Board Members regarding the resolutions carried out or pending to be carried out;
4. Inform the President of the Republic and the Senate on the policies and regulations of general applicability issued by the Bank in the exercise of its duties in accordance with the provisions of Section 4;
5. Request, with the prior consent of the Senate, the participation of the State Prosecution Office in lawsuits involving a public interest in which the Bank is a party or has an interest;

6. Represent the Bank other than in court actions;
7. Supervise the execution of Board resolutions and carry out any other duties entrusted to him by the Board, being allowed to partially delegate the powers vested in him, subject to the approval of the Board.

**Section 23.** It shall be the duties of the Vice-Governor:

1. Substitute for the Governor in the event of absence, vacancy or any other reason preventing the Governor from performing his office. No evidence of the reason for such substitution shall be necessary to be given to third parties. Substitution shall embrace all duties and powers of the Governor, including those duties and powers that have been delegated to him,
2. Serve as minister of oath and depositary of the statements referred to in the final paragraph of Section 14, and (7)
3. Carry out any other duties as may be entrusted to him by the Board.

**Section 24.** The General Manager shall be in charge of the direct management and supervision of the Bank, pursuant to authority granted and instructions issued by the Board. The following shall be his specific duties:

1. Carry out the acts of administration of the Bank, as well as any other acts entrusted to him by the Council;
2. Issue appropriate instructions, comments and recommendations to the several departments and personnel of the Bank necessary for the efficient management and the adequate conducting of its operations;
3. Attend Board meetings with the right to be heard;
4. Represent the Bank in court proceedings, with the powers granted him pursuant to the first paragraph of Section 7 of the Code of Civil Procedure, being the person upon whom service of process in lawsuits brought against the Bank has to be made in order for such a service to be valid.

Without prejudice to the above, the General Manager may grant powers of attorney to represent the Bank in court to other Bank officials or to third parties, with the powers granted by paragraph one of Section 7 of the Code of Civil Procedure, and agree on the compensations to be paid to the latter. The General Manager shall require the prior consent of the Board in order to abandon any action brought before the courts during the first instance, or to admit the complaint of the opponent, or to waive appeals or legal periods, settle, compromise, grant arbitrators the power to decide without having to follow rules of procedure, approve terms and conditions of payment and to collect. However, the Council may grant to other Bank officials or to third parties all or some of the powers above mentioned, to be exercised in specific lawsuits;

5. Perform all other duties as may be entrusted to him by the Board.

The incapacity referred to in Section 13 shall apply to the General Manager in its case. Likewise, there shall also apply to the General Manager the incompatibilities and obligations provided for in Section 14(8)

**Section 25.** The General Counsel shall be the head of the legal department and the supervisor of the members of its staff. He shall be especially in charge of:

1. Seeing that all the decisions, resolutions and contracts subscribed by the Bank comply with all the applicable current legal provisions. To this end, he shall acquaint himself with all such matters and shall make his observations known to the Board, for which purpose he shall attend the meetings thereof with the right to be heard;
2. Informing on legal matters submitted to his knowledge and, generally giving advice to the Board and the higher officials of the Bank and through the legal department, advise all the departments of the Bank in matters requiring a legal opinion;
3. Supervising the progress of legal proceedings to which the Bank is a party;
- 4.

Exercising the authority and carrying out the duties entrusted to him by the Board.

**Section 26.** The control and internal supervision of the Bank's accounts, operations and administrative regulations shall be the responsibility of the General Auditor. The General Auditor shall report in writing to the President, with a copy to the Board, the comments and objections he may deem appropriate regarding the accounts and operations of the Bank.

1. The third paragraph of Section 14 was amended, as it appears in the text, by the Single Section of Law 19,746, published in the Official Gazette on August 9, 2001, rectified in the issue of the Official Gazette published on August 14, 2001.
2. Paragraph substituted, as it appears in the text, by Section 11, letter a. of Law No. 19,653, published in the Official Gazette on December 14, 1999.
3. Paragraph amended as it appears in the text, pursuant to Section 7 of Law N° 20,088, published in the Official Gazette on January 5, 2006. This law shall come into effect 90 days following the publication in the Official Gazette of the Regulation that shall establish the requirements of the patrimonial declarations as referred to in the said legal body which must be set forth within 120 days as from January 5, 2006. (transitory articles 1 and 2 of Law N° 20,088).
4. Article interpolated, as it appears in the text, by letter a) of Article 74 of Law No. 20,000 published in the Official Gazette on 16th February 2005.
5. Paragraph added, as it appears in the text, by Section 11, letter b. of Law No. 19,653, published in the Official Gazette on December 14, 1999.
6. Section substituted, as it appears in the text, by Section 16 of Law No. 19,806, published in the Official Gazette on May 31, 2002.
7. Letter added, as it appears in the text, by Section 11, letter c) of Law 19,653, published in the Official Gazette on December 14, 1999.
8. This paragraph was amended, as it appears in the text, by the addition of the expression "and obligations", by Section 11, letter d. of Law 19,653, published in the Official Gazette on December 14, 1999.

## **Title III: The Authority and the Operations of the Bank**

### **Subtitle One, General Provisions**

**Section 27.** The Bank may grant financing or refinancing to banking entities and financial institutions only. Under no circumstances shall the Bank grant to such entities and institutions its guarantee, nor acquire securities issued by the state, its agencies or enterprises.



No public expenditure or credit of whatsoever nature may be financed either directly or indirectly with loans granted by the Bank.

However, in the event of foreign war or threat of foreign war, to be qualified by the Council on National Security by means of a secret resolution, the Bank may obtain, confer or finance credits to the state and to public or private entities.

## Subtitle Two, Currency

**Section 28.** The Bank has the exclusive authority to issue banknotes and to coin money in accordance with the provisions of this Title.

**Section 29.** The Bank may contract both within the country and abroad the printing of banknotes and the stamping of coins, including gold ones.

**Section 30.** The banknotes and coins shall state their value in the current monetary unit, its multiples and submultiples thereof, and bear such characteristics as may be determined by the Council through a resolution to be published in the *Official Gazette*.

**Section 31.** The banknotes and coins issued by the Bank shall be the sole means with an unrestricted discharge effect and power of exchange, shall be legal tender throughout the territory of the Republic and shall be accepted at their face value. The provisions of this Section shall not apply to gold coins.

**Section 32.** The Bank shall withdraw from circulation the banknotes and coins in poor condition. The damaged banknotes clearly keeping over half of their original text may be exchanged at the Bank at their nominal face value; should they have a lesser percentage, they may be exchanged at their nominal face value provided the Bank is satisfied with the evidence presented that the missing portion has been totally destroyed.

The Bank shall not be compelled to exchange damaged banknotes not covered by the preceding paragraph.

**Section 33.** The banknotes and coins definitively withdrawn from circulation shall be destroyed in the manner determined by the I and shall cease to have, as of said moment, discharge effect or be legal tender.

The General Manager shall see that the destruction be uniform and shall take complete control and security measures as he may deem necessary to duly safeguard the correction of the process.

## Subtitle Three, Regulation of the stock of money in circulation and credit

**Section 34.** In order to regulate the stock of money in circulation and credit, the Bank shall have authority to:

1. Open credit lines to banking entities and financial institutions and subscribe the corresponding agreements, concede refinancing to said entities and institutions, discount and rediscount bills of exchange, promissory notes and other negotiable instruments both denominated in Chilean and in foreign currency. Discount or rediscount transactions shall always be made with the liability of the endorsing institution.

In the event of credits accorded to the Bank by foreign or international financial institutions, the Bank will be allowed to assign said credits to banking entities or financial institutions, establishing the terms and conditions for the transfer of such resources to third parties;

2. Establish the reserve requirements that, proportionate to their deposits and commitments, banking entities, financial institutions and savings and loan cooperatives must keep, under the conditions set forth by the Bank.

In order to exercise the authority referred to above, the consent of the majority of all Council members shall be necessary.

The reserve shall be kept in banknotes and coins of legal tender available in cash or deposited at sight in the Bank or, as the case may be, in foreign currency of general acceptance in the international exchange markets. The guarantee deposit referred to in Section 36 of the Banking Act shall be deemed part of the reserve.

Notwithstanding the above, the Bank may authorize that part of the reserve be kept in securities or notes issued by the Bank.

The reserve rates the Bank may establish shall be standard for the various classes of commitments. Without prejudice to the foregoing, the Bank may establish different reserve rates, either based upon the nature of the deposits or commitments, portions of the total amount of any class, the several currencies in which they may be expressed or the circumstance of being an institution that, considering the date of its incorporation, may not be governed by regulations of general applicability.

Under no circumstances may the reserve rates being established exceed 40%, on the average, in the case of deposits or commitments at sight, or 20%, in the case of other deposits and commitments.

Without prejudice to the above established limits, the Bank may, in special cases duly qualified, establish additional reserve rates for deposits made by the State Treasury with banking entities or financial institutions.

The provisions contained in this number shall be understood without regard to the provisions of Section 80 bis of the Banking Act;

3. Assign instruments of its own credit or investment portfolio to banking entities and financial institutions and acquire from the same, with the right to exact payment from them as jointly and severally liable, instruments of their credit or investment portfolio, under the terms and conditions as determined by the Council;
4. Accept and make deposits in Chilean or foreign currency from or with the banking entities and financial institutions.

With the consent of the majority of all Council members, the Bank may accept deposits from the State Treasury or from other State controlled institutions, bodies or enterprises. In the event that said deposits earn interest, such interest may not exceed normal market rates;

5. Issue securities, which must state the terms and conditions of the respective issue, as well as to place and acquire said securities in the open market;
6. Buy and sell securities and commercial paper in the open market issued by banking entities and financial institutions. Provided that, in exercising such powers the Bank may not acquire shares of stock of the referenced

- entities and institutions, without prejudice to the provisions of numbers 2 and 3 of Section 36; and
7. Establish interest rates, fees, indexation systems and other terms and conditions applicable to operations performed by the Bank.

#### **Subtitle Four, Regulation of the financial sector and of the capital market**

**Section 35.** With regard to the regulation of the financial sector and of the capital market, the Bank shall have authority to:

1. Issue the regulations and establish the terms and conditions which the banking entities, financial institutions and savings and loan cooperatives shall follow with respect to borrowing from the public, whether by way of deposit, loans, participation, assignment or transfer of commercial paper or otherwise;
2. Authorize the banking entities to pay interest on banking accounts, under the terms and conditions determined by the Board;
3. Authorize the banking entities to concede credits associated to banking checking accounts and to allow overdrafts on said accounts;
4. Establish the maximum interest rates payable by the banking entities, financial institutions and savings and loan cooperatives on sight deposits;
5. Issue the regulations and set the limitations on collateral and surety matters denominated in foreign currency to which banking entities and financial institutions must conform;
6. Issue the regulations and set the limitations regarding the ratio that must exist between inflow and outflow operations of banking entities, financial institutions and savings and loan cooperatives;
7. Issue the regulations to which enterprises having as their purpose the issuance or operation of credit cards or any other similar method and which are under the supervision of the Superintendency of Banks and Financial Institutions, must conform;
8. Authorize the establishment and regulate the functioning of clearing houses for bank checks and other securities in which banking entities and financial institutions participate;
9. Authorize the adjustment systems to be used by banking entities, financial institutions and savings and loan cooperatives in their money credit transactions in Chilean currency. Any agreement regarding an unauthorized adjustment system shall be deemed null and void.

Amendments to an adjustment system authorized by the Bank or its subsequent repeal shall not affect the money credit transactions in which a banking entity, financial institution or savings and loan cooperative is a party, which shall continue being regulated by the adjustment system stipulated, under the same conditions prevailing prior to the amendment or repeal.

Notwithstanding the above, the parties may, in this case, agree on the substitution of the adjustment system applicable to the transaction by another one which is authorized by the Bank.

For purposes of the provisions in the second sentence of this subparagraph, the Bank shall continue to calculate, determine and publish the appropriate index in accordance with the procedure prevailing at the time of the amendment or repeal.

The obligation referred to in the preceding paragraph shall be performed for a period of 10 years counting from the date of the amendment or repeal. Upon expiration of such period, the Bank shall furnish the relevant index only at the request of interested parties, unless the Bank in its sole judgment finds that the number of subsisting transactions requires publication of the relevant index to be continued.

The resolutions adopted by the Bank pursuant to this Section shall require the prior opinion of the Superintendency of Banks and Financial Institutions, to be given within the period fixed by the Board, which shall not be less than three banking days. Should the Superintendency fail to furnish such opinion within the period set by the Board, the Board may adopt the appropriate resolution without further delay.

## **Subtitle Five, Authority to maintain the stability of the financial sector**

**Section 36.** In order to maintain the stability of the financial sector, the Bank shall have the power to:

1. Concede credits to the banking entities and financial institutions in the event of emergencies, for a term not exceeding 90 days, whenever these entities or institutions may have difficulties arising out of a temporary cash shortage.

The extension of the term of such credits shall require a resolution adopted by the majority of all Board Members with the prior opinion of the Superintendency of Banks and Financial Institutions. The Bank may condition the approval of credits upon the observance of specific rules of conduct of financial management by the applicant.

In the situation described in this subparagraph, the Bank may also be entitled to acquire from the referenced entities and institutions instruments of their credit or investment portfolio;

2. Extend credits to or acquire assets from, banking entities and financial institutions, pursuant to the provisions contained in Sections 120, paragraph four, and Section 129, paragraph two of the Banking Act;
3. Participate in the proposed agreement referred to in Subtitle Two of Title XV of the Banking Act and subscribe, with no limitations, to the terms and conditions thereof, being empowered even to forgive part of the debts.

## **Subtitle Six, The functions of the bank as state representative**

**Section 37.** At the request of the Minister of Finance, the Bank may contract internal and foreign credits and take part in any transaction which is compatible with its purposes on behalf of the State. To that specific end, the issuance of an executive decree shall be required.

In its capacity as representative of the State, the Bank shall have the power to take every action regarding the repayment and the servicing of principal and interest on the direct or indirect foreign debt of the State.

In the same capacity as indicated in the preceding paragraph, the Bank shall have the power to act on behalf of the State in the conversion and renegotiation of the direct or indirect foreign public debt. With the approval of the President of the Republic granted by means of an executive decree issued through the Ministry of Finance it shall, subject to the terms specified in the legal authorizations concerning each transaction, enter into

agreements with the creditors and execute the related contracts which will be binding upon the State as if entered into by itself.

The total proceeds of foreign credits or loans granted, or to be granted, to the Chilean State in the contracting of which the Bank acts as the representative of the state shall be considered by the foreign creditor as a State debt, even though the whole or a portion of such proceeds, in accordance with the respective loan contracts, has been or is intended to be used to finance projects that come within the scope of the purposes of the Bank and, in consequence, has not or is not to be deposited in Treasury accounts, being retained instead by the Bank for such purposes.

In any event, the State, through the Treasury, shall previously provide to the Bank the funds necessary for the servicing and repayment of credits in whose contracting the Bank has acted as State representative.

For the exercise of the functions described in this Section, the Bank shall be entitled to charge the state a fee to be agreed upon.

## **Subtitle Seven, Authority of the bank regarding international Transactions**

**Section 38.** With regard to international transactions, the Bank shall have authority as follows:

1. To participate, on behalf of the Chilean government or on its own behalf, as the case may be, in foreign or international financial organizations and to engage in business transactions with them. In order for the Bank to act on behalf of the Chilean government, the issuance of an executive decree through the appropriate Ministry, shall be required, which must bear the signature of the Minister of Finance;
2. To carry out the provisions contained in the contracts to which the Bank is a party, as well as those provisions contained in treaties or agreements entered into by the Government of Chile, consistent with the purposes of the Bank; in the latter case an executive decree issued through the appropriate Ministry is required bearing the signature of the Minister of Finance. If, in accordance with such treaties or agreements, an outstanding balance ought to be paid, the Treasury or the agency concerned shall first make available the appropriate funds to the Bank;
3. To borrow all types of credits abroad, through credit lines, loans or in any other manner;
4. To issue securities which shall comply with terms and conditions authorized for the corresponding issue and place them abroad;
5. To concede loans to foreign States, foreign central banks or banking institutions, foreign or international financial entities, provided the purpose of the said loans is to assist in the fulfillment of the objectives of the Bank;
6. To receive deposits from, or open checking accounts both in Chilean and foreign currency to foreign central banks or banking institutions or international financial entities, and foreign States;
7. To keep, manage and use its international reserves, both within the country and abroad. Such reserves may be composed of foreign currency, gold or debt securities, equity or other commercial paper issued or guaranteed by foreign States, foreign central banks or banking

institutions or international financial entities. The Bank shall have the authority to pledge such reserves as security of compliance with its obligations.

## Subtitle Eight, Authority of the bank regarding foreign exchange transactions (1)

**Section 39.** Any person may freely engage in foreign exchange transactions. Foreign exchange transactions include buying and selling foreign currency and, in general, any act and agreement that may have the effect of creating, amending, or extinguishing an obligation payable in such currency, even if no transfer of funds or drafts to or from Chile is actually involved. For these purposes, foreign currency shall be deemed to mean banknotes or coins of foreign countries whatever their denomination or characteristics, and bills of exchange, checks, letters of credit, payment orders, notes, drafts and any other document giving evidence of an obligation payable in such currency.

Foreign exchange transactions shall also be deemed to include the transfers or transactions of gold or of instruments representing gold, provided they refer to gold objects that by their nature are suitable to serve as a means of payment, even if no transfer of funds or gold to or from Chile is actually involved, and without regard to the deed or contract giving rise to such transfer or transaction. The above mentioned gold objects and the instruments representing gold shall have, for the purposes of this Subtitle, the character of foreign currency (2).

Notwithstanding the provisions set forth in the preceding paragraph, the import, export or transit of gold in any shape to, from or through the country, shall be considered as merchandise for all customs and tax purposes.

The effects of foreign exchange transactions entered into abroad, for their performance in Chile, shall be subject to Chilean law.

**Section 40.** The Bank may require that the transaction of specified foreign exchange operations be reported in writing using the prescribed forms. The Bank shall identify in a precise and specific manner the foreign exchange transactions that shall become subject to the obligations referred to in the preceding paragraph.

**Section 41.** For all purposes of this Act, the Formal Exchange Market shall be deemed to consist of the banking entities. The Bank may authorize other entities or persons to be part of the Formal Exchange Market, that shall be entitled to conduct only such transactions as the Bank may have determined.

A foreign exchange transaction shall be deemed performed within the Formal Exchange Market whenever done by or through any of the persons or entities forming part of it.

**Section 42.** The Bank may decide, through a justified resolution adopted by the majority of all Board Members, that the following transactions are to be conducted exclusively within the Formal Exchange Market:

1. The repatriation of foreign currency into the country and its sale for Chilean currency representing the value of exports of goods within the terms specified by the Bank. The period for such repatriation shall not be less than ninety days counted from the date of the relevant shipment nor shall the period for the sale of foreign currency be less than ten days counting from the date of expiry of the period for repatriation;

2. The repatriation of foreign currency and its sale for Chilean currency representing export of services, net freight balances, commissions earned on foreign trade transactions, indemnities from insurance or other sources and, generally, payments accrued abroad by individuals or entities resident in Chile, within the terms established by the Bank. The period for such repatriation shall not be less than ninety days counting from the date of the actual or presumptive payment of the foreign currency nor shall the period for the sale of the foreign currency be less than ten days counting from the date of expiry of the period for repatriation.

It is a statutory presumption that the date for payment may not be more than 180 days after the date of the loading of the goods, sailing of the vessel, loss of the goods or the date of the obligation, as the case may be.

In case the Bank requires that the repatriation and sale of the foreign currency representing net freight balances, contracts of carriage, bills of lading, or other contracts that may be entered into by maritime or air enterprises engaging in international transport be performed in the Formal Exchange Market, such transactions shall be deemed to comply with such requirements to the extent that evidence is furnished to the Bank to its satisfaction, at least by means of a balance sheet audited by external auditors, as to the fact that within the relevant fiscal year or within the term in which the applicable provision is in effect, foreign currency has been brought back and sold in such market in an amount equivalent in Chilean currency to the value resulting from the equation set forth in the next paragraph.

The value referred to in the preceding paragraph shall be the result of the addition of all payments that said enterprises must make in Chile within the relevant period, such as expenses, taxes, purchases, profit distributions or other payments due as a consequence of compliance with acts or contracts to be performed in Chilean currency, less all revenues received within the same period in Chilean currency, with the exception of any amounts arising from credits obtained or to be obtained for said period from individuals or entities domiciled in Chile, whether financial or not, or arising from the issuance and placing of bonds, debentures or securities within the country.

However, if evidence is furnished to the Bank's satisfaction as to the fact that the foreign currency obtained by said enterprises abroad is less than the liabilities referred to in the two preceding paragraphs, it shall be deemed that said obligations have been complied when evidence is furnished to the Bank as to the repatriation and sale of the foreign currency accrued during the corresponding period.

In the case of transactions referred to in paragraphs 1 and 2 above, the Bank may determine the foreign currency, from those generally accepted in international trade, in which repatriations are to be made.

In the exercise of the authority referred to in paragraphs 1 and 2 above, the Bank shall have the power to issue supplementary rules in order to expedite foreign trade, taking into account, for such purpose, the nature, term, and other features of such transactions.

The Bank may grant extensions for the fulfillment of the obligations of repatriation and sale referred to in the preceding paragraphs or to dispense with those obligations when irrefutable evidence is supplied

as to the impossibility of the repatriation or sale, or when the total or partial value to be obtained for the relevant transaction is applied to direct payment abroad of obligations authorized by the Bank.

The Bank may also dispense with the fulfillment of the above referenced obligations when the relevant transactions are, in its sole judgment, of lesser importance, not representative of commercial value or are applied to payment of imports.

In the case of exporters who fail to comply with repatriation and sale obligations referred to in paragraphs 1 and 2 above, the Bank may request that as a condition to conducting new export dealings, guarantees be established to ensure compliance therewith, which guarantees, in no case, will exceed 50% of the amount of the relevant transaction;

3. The payment in foreign currency of imports of goods or services, commissions earned as a consequence of foreign trade activities, transport services, royalties, technical assistance, premiums for, or indemnities from insurance or otherwise, and any other payment made in foreign currency abroad or to persons not having residence in Chile;
4. The remittance of foreign currency for purposes of investments, capital contributions, loans or deposits abroad;
5. The sale, either total or partial, in Chilean currency, of the foreign currency received, whatever its origin, by persons having their residence in Chile, as a consequence of acts or transactions conducted in Chile or abroad.

In the case of transactions referred to in subparagraphs 3, 4 and 5 of this Section, the Bank shall, whenever exercising the authority thereby granted, identify the grounds giving rise to such transaction.

The Bank may require the documentation and set forth regulatory provisions necessary to supervise and secure the compliance of the obligations prescribed in this Section.

In the situation described in this Section, the corresponding transaction shall not be carried out, whether in Chilean currency or by means of other assets, unless expressly authorized by the Bank.

**Section 43.** The Bank shall adopt the measures necessary to ensure that the Formal Exchange Market is made up of a number of persons or entities large enough to allow its functioning under appropriate competitive conditions.

The Bank shall set forth the regulatory provisions for foreign exchange transactions to be conducted between banking entities and other persons authorized to be a part of the Formal Exchange Market, or between themselves, or between the former and the latter with the Bank.

In the event that by decision of the Bank specified transactions ought to be conducted within the Formal Exchange Market, the persons and entities which form such a market shall not, for this sole reason, be prevented from conducting other foreign exchange transactions. The above shall be understood without prejudice to the provisions established under subparagraph 4 of Section 49.

**Section 44.** The rate of exchange in the Formal Exchange Market shall be that freely agreed between the contracting parties.



The Bank shall publish daily the rate of exchange of foreign currencies generally accepted in the international exchange markets, based upon the transactions made in the Formal Exchange Market in the immediately preceding business day and, if appropriate, upon the reports it may obtain from foreign market records.

**Section 45.** The Bank may verify that the value of goods and services referred to in subparagraphs 1, 2 and 3 of Section 42 is consistent with their current value in the international market.

Whenever the Bank exercises such authority, it shall allow the interested party, prior to the execution of such export or import transaction, to submit documentary evidence of the value assigned to the corresponding good or service.

The Bank shall, taking into consideration such information, issue a resolution within the period of fifteen business days, either approving or rejecting such value and, in the latter case, the Bank shall proceed to determine the value it considers to be prevailing in the international market, without prejudice to the right of the interested party to file a claim against the determination before the Commission set up in accordance with the provisions of the following Section.

Should the Bank fail to issue the resolution referred to in the preceding paragraph within the required period, the value assigned by the interested party shall be upheld. In the event that any of the transactions referred to in subparagraphs 1 and 2 of Section 42 is carried out without the prior submission of the documentary evidence referred to in paragraph 2 of this Section, the repatriation and sale liabilities related thereto shall be established based upon the values determined by the Bank. In the case of transactions under subparagraph 3 of Section 42, the relevant payments shall be made based on the values determined by the Bank.

The provisions of this Section shall be understood to be without prejudice to regulations for customs or tax valuation, under the competence of the National Customs Service, Internal Revenue Service or other agencies.

**Section 46.** Claims against resolutions issued by the Bank rejecting the value of the transaction pursuant to the preceding Section may only be filed in writing within ten banking business days, to a Commission to be formed by the National Economic Prosecutor, who shall preside over it, one representative of the Ministry of Finance and one representative of the Ministry of Foreign Affairs, appointed through the corresponding executive decree.

Based upon the information available or submitted, the Commission shall determine the value to be assigned to the respective transaction.

The Commission shall issue its decision within the period of ten banking business days counted from the date of the filing of the claim.

Decisions adopted by the Commission may be appealed to the Court of Appeals of Santiago, under the terms and conditions set forth in Title V hereof.

**Section 47.** The Bank has the authority to agree with domestic or foreign investors or creditors and other parties to a foreign exchange transaction, upon the terms and conditions under which the principal, interest, profits or other benefits that might be generated may be used, remitted abroad or repaid to the domestic investor or creditor, as well as to assure them free access to the Formal Exchange Market for that purpose. Agreements entered into under the provisions of the preceding paragraph shall conform to the general regulations and conditions established by the Board, for which a justified resolution adopted by the majority of

all of its Members shall be required. Such resolution may be vetoed by the Minister of Finance as provided under Section 50.

Agreements executed in accordance with the provisions of this Section may not be amended unless by mutual agreement of the parties thereto.

**Section 48.** The Bank shall authorize access to the Formal Exchange Market for investments to be made by pension funds abroad, pursuant to legal provisions governing such funds.

The Bank shall publish at least once a month in the Official Gazette the financial rating given by specialized foreign organizations to the securities and to enterprises or entities, either foreign or international, wherein such investments may be made.

Without prejudice to the provisions contained in the preceding paragraph, the Bank shall be bound to furnish the above information at the request of any pension fund.

**Section 49.** The Bank shall have the authority to set the following limits to foreign exchange transactions conducted, or those that should be conducted, in the Formal Exchange Market, in accordance with the procedure prescribed in Section 50 hereof:

1. Establish the obligation of repatriation into the country, in foreign currency, of the corresponding payment value obtained from the transactions specified in subparagraphs 1, 2 and 5 of Section 42 and the obligation to convert into Chilean currency the foreign currency arising from such transactions (3)

In the event of conversion of foreign currency arising from investments, capital contributions or credits from abroad, the Bank shall authorize access to the Formal Exchange Market for compliance with obligations arising therefrom, under terms and conditions generally in effect at the time of such conversion;

2. Determine that the credits, deposits or investments in foreign currency originating or to be sent abroad be subject to a reserve requirement. Such requirement shall apply only to transactions in respect of which remittances are made after the adoption thereof.

Such reserve, which in no event shall exceed 40 per cent of the respective transaction, may be imposed either in Chilean or foreign currency and shall be set up with the Bank or, if so determined by the Bank, with banking entities or financial institutions.

Whenever exercising the authority provided under this subparagraph, the Bank shall have the power to issue different rules, taking into account the several types of transactions.

The Bank shall also have the authority to pay interest or to authorize the payment of interest, on funds subject to reserve requirements, which shall in no event exceed normal market rates;

3. Establish that payment or remittance obligations specified in subparagraphs 3 and 4 of Section 42 and Section 48, shall require prior authorization from the Bank under such terms and conditions as the

Bank may set forth. This restriction shall not apply to the payment of import of goods and its associated expenses.

Without prejudice to the foregoing, the Bank may determine that the right of access to the Formal Exchange Market for payment of imported goods and its associated expenses may only be exercised once the period established for that purpose by the Bank has expired. Said period may not exceed 180 days counting from the date of shipment of such goods. This restriction may only be applied with respect to goods shipped after the adoption thereof. Foreign exchange transactions to which the Bank may have granted general or special authorization under this subparagraph, shall not be amended except with the prior consent of the Bank, either with regard to their purposes, the parties intervening or, generally, any other particular or circumstance representing an alteration of the same as compared with the terms and conditions under which they were authorized. The amendments to such foreign exchange transactions, or the assignment of rights arising from the authorization which have not been consented to by the Bank, shall not be binding upon the Bank, without prejudice to the penalties established under Title IV of this Act;

4. Rule that the entities which form the Formal Exchange Market may execute only the foreign exchange transactions expressly authorized by the Bank and only in the manner established thereby. In any event, foreign exchange transactions related with import and export of goods and the payment and remittance referred to in the second subparagraph of paragraph 1 of this Section, may be engaged in freely at any time.

Foreign exchange transactions which in accordance with Section 42 must be performed in the Formal Exchange Market and not expressly authorized pursuant to the restriction set forth in this paragraph, are hereby prohibited;

5. Set limits, under generally applied criteria, to the holdings in foreign currency or investments denominated in foreign currency that banking entities or persons named under Section 41 may maintain within the country or abroad. Under no circumstances may the Bank, in the exercise of the authority provided under this Section, establish that specified foreign exchange transactions have to be performed exclusively with the Bank or under conditions that fail to ensure free market competition.

Under no circumstances may the Bank require advance deposits, or establish requirements in respect of transactions regarding import or export of goods and their associated expenses, other than those contemplated under this Act.

**Section 50.** The limitations established in the preceding Section may only be imposed by resolution adopted by the majority of all Council members, based upon the circumstance of being so required by the stability of the currency or the financing of the balance of payments of the country and for a predetermined period which shall extend to a year, at the very most. The said resolution may be subject to veto by the Minister of Finance, in which event the respective restriction may be adopted only pursuant to a favorable vote of all the Board Members.

The restriction, once the predetermined period has expired, may be renewed, the renewal decision being subject to the same rules as prescribed in the preceding paragraph.

The termination of the restriction or its amendment prior to the expiry date shall require the decision of the Board adopted by a majority of its members, and may also be vetoed as prescribed in paragraph 1.

**Section 51.** Foreign exchange operations executed by the Bank shall not be subject to the limitations and restrictions referred to in this Subtitle.

**Section 52.** The provisions of this Subtitle shall be understood to be without prejudice to the provisions of Decree Law 600 of 1974.

Foreign exchange transactions referred to in the statutes listed below shall continue to be governed by the provisions thereof: a) Decree Law 1,089 of 1975 ; b) Decree Law 1,349 of 1976; c) Decree Law 1,350 of 1976 ; d) Decree Law 1,557 of 197; and e) Law 18,156.

## **Subtitle Nine, Other functions of the central bank**

**Section 53.** The Bank shall timely compile and publish the main macroeconomic statistics, including those of a monetary and foreign exchange character, balance of payments and national accounts, and other overall economic and social accounting systems. For all purposes of the preceding paragraph, the Board shall establish, by means of a resolution published in the Official Gazette, the nature, contents and periodicity of the information it shall disclose.

In order to perform the functions referred to in this Section, the Bank shall have the authority to request and obtain from the various agencies and departments of the Civil Service Administration, decentralized entities, and generally the public sector, any information it may deem necessary.

**Section 54.** At the request of the interested entities and, upon a resolution adopted by the majority of all Board Members, the Bank may provide banking services other than financing to banking entities and financial institutions. In such cases, the Bank shall be entitled to charge such fees as may be agreed upon.

**Section 55.** The Bank may open checking accounts to banking entities and financial institutions, to the Treasury and other state entities, agencies or enterprises whenever necessary for the performance of their transactions with the Bank, as determined by the majority of all Board Members.

The Bank shall have the exclusive responsibility for the issuance of the general conditions applicable to the checking accounts referred to in the preceding paragraph.

**Section 56.** The Bank shall have the authority to request guaranties in the transactions it performs and to receive securities or goods in custody, under the conditions as may be set by the Board.

**Section 57.** The Bank may acquire real or personal property at any title, as well as hold, administer and sell such properties.

The Bank may execute any acts, deeds and operations, both banking and commercial, necessary for the accomplishment of its purposes, subject to the powers and authority granted to it by this Act.

1. Subtitle Eight entered into effect as from 19 April 1990, pursuant to ARTICLE FOUR of Law 18,840, as amended by Law 18,901.
2. Paragraph amended, as it appears in the text, by Section 1, letter a) of Law 18,970, published in the Official Gazette on 10 March 1990.

3. Paragraph substituted, as it appears in the text, by Section 1, letter b) of Law 18,970, published in the Official Gazette on 10 March 1990.

## Title IV: Penalties

**Section 58.** Violations of any of the provisions contained in Sections 40, 42 and 49 of this Act shall be penalized by the Board with a revenue fine of up to twice the total amount of the transaction.

In any event, in the case of a violation of a provision of subparagraphs 1 and 2 of Section 42 of this Act, the fine shall not be less than fifty per cent of the total amount of such a transaction.

Violation of decisions or resolutions adopted by the Bank regarding foreign exchange operations other than those dealt with under the preceding paragraphs, may be penalized by the Board with a revenue fine not to exceed one hundred per cent of the total amount of such transaction. In the event that the amount of such transaction were impossible to determine, the fine shall not be in excess of 3,000 monthly tax units.

**Section 59.** Any person making a willful misrepresentation in the documentary evidence presented to the Bank or in the foreign exchange operations regulated by this Act, shall be punished by the criminal courts of law with a penalty of from 541 days to 5 years of imprisonment (1).

**Section 60.** Should the Bank verify the existence of a fact likely to be penalized with a fine, it shall first provide the right of a hearing to the party concerned for which purpose it shall address such party by certified letter to the domicile it may have registered with the Bank. If such a domicile is not so registered with the Bank and the party concerned had become connected with the Bank through a banking entity or other person authorized to operate in the Formal Exchange Market, such letter shall be addressed to such entity or person, which procedure shall be deemed to comply with the obligation established in this paragraph.

The party concerned, within a period of 15 banking business days, counted from the date of mailing, shall be entitled to submit to the Bank in writing the particulars which, in his opinion exempt him from liability, or that extinguish or extenuate such liability. Once said period has expired, whether or not the party concerned has submitted the relevant writ, the Bank shall forthwith adopt its decision or resolution as appropriate.

**Section 61.** Without prejudice to the penalties established in the preceding Sections, banking entities or persons authorized to make transactions in the Formal Exchange Market who violate the provisions issued by the Bank regarding foreign exchange operations, may be penalized directly by the Bank by way of withholding the right to engage in such operations for a period of up to sixty days, or by way of revoking the authorization to perform such transactions in case the infringer is not a banking entity. In such event, the entity or person affected by the measure adopted, shall be entitled to appeal to the Court of Appeals of Santiago in the manner and conditions set forth in Title V of this Act.

In the writ of appeal, the interested party may request the suspension of the effects of the resolution, without prejudice to the final decision.

**Section 62.** The fines referred to in Section 58 of this Act shall be set in the same currency in which the penalized transaction was executed or was intended to be executed, in dollars currency of the United States of America, or as the case may be, in monthly tax units. Whenever appropriate, such fine shall be payable in Chilean currency at the exchange rate published by the Bank pursuant to the provisions of the second paragraph of Section 44, for the day preceding that in which the fine is paid.

Fines applied by Board resolutions shall be collectable forthwith, and in the ensuing lawsuit no pleadings will be admitted other than full payment, being barred by the statute of limitations, or inapplicability to the infringer named. With regard to this last plea, the existence of the obligation may not be discussed and, in order for it to be admitted, it must be based upon documentary evidence and have a plausible ground. If such requirements are not met, the court shall reject the plea outright.

**Section 63.** The Bank may collect, either in or out of court, the fines imposed pursuant to its authority, and enter into agreements for the payment thereof, establishing the interest, terms, and other conditions as it may deem fit.

Fines unpaid within the period set by the Bank, which period may not be less than thirty days counting from the date of servicing notice, shall earn interest at the current rate applicable to transactions in foreign currency or, as appropriate, at the current rate of interest applicable to indexed transactions in Chilean currency, in accordance with the rates prevailing during the period of delay.

**Section 64.** Whoever manufactures or sets in circulation objects whose shape resembles banknotes of legal tender in a manner that such forged banknotes are easily accepted in place of the real ones, shall be penalized with 541 days to 5 years of imprisonment.

**Section 65.** The Bank shall notify the corresponding supervisory authorities in writing of the penalties imposed upon the entities under their control in accordance, with the provisions of this Title.

1. Section amended, as it appears in the text by Section 16 of Law 19,806, published in the *Official Gazette* on May 31, 2002.

## Title V: Publicity and Claim Procedure

**Section 66.** The Bank shall be discreet with regard to the particulars of transactions executed and shall not advance information thereon except to the parties thereto, or to their agents or legal representatives.

The above provisions shall not apply in the event that the respective information is requested by the Superintendency of Banks and Financial Institutions in connection with supervisory activities being performed with regard to entities under its control or by the National Customs Service, in the case of documents referred to in Section 45, or by this Service, the Income Revenue Service or the General Treasury in the case of auditing related with requests for tariff or tax exceptions, and export promotion, or the National Economic Prosecutor, pursuant to DL 211 of 1973, when dealing with issues under its competence previously approved by the Resolving Power Commission. Nor shall the discretion requirement apply in the case of information requested by the Financial Analysis Unit of the Public Prosecutor on the grounds of suspicious activities or crimes as defined in the law by which the mentioned Unit was established. (1)

Likewise, the requirement of discretion shall not apply whenever a specific record is requested by ordinary or military courts or by the Preventive or Resolutive Commissions of Decree Law 211, of 1973. (2)

Notwithstanding the foregoing, the Bank may provide general information as to transactions on a non-personalized basis but only for statistical and public informational purposes.

**Section 67.** Resolutions or decisions adopted pursuant to subparagraph 2 of Section 34, or in the exercise of the authority granted under Sections 35, 40, 42 and 49, and all those of general applicability and those which

in the opinion of the Board or any of its members require public knowledge, shall be published in the Official Gazette. For all legal purposes, the effective date of such resolution or decision shall be that of its publication, unless the resolution expressly provides a different date. Board resolutions or decisions of a private nature shall be notified to the public by means of its inclusion in summary form on a notice to be affixed for at least three banking business days inside the main office of the Bank in Santiago and in its branch offices, in a place where the general public has access.

The above notice shall be affixed within the five banking business days following the adoption of such resolution or decision.

Without prejudice to the foregoing, resolutions or decisions referred to in this Section shall be notified to the party concerned by certified mail addressed to the domicile that may have been registered at the Bank. If such domicile is not so registered and the person concerned has been connected with the Bank through a banking entity authorized to engage in foreign exchange transactions on the Formal Exchange Market, such communication shall be addressed to such entity, which procedure shall be deemed to comply with the obligation established under this paragraph.

In any event, failure to give such notice shall not affect the validity of the corresponding resolution or decision.

**Section 69.** Decisions, regulations, resolutions, orders or instructions issued by the Bank pursuant to its authority under Sections 34, 35, 36, 58 and 61 and in Subtitle Eight of Title III which are claimed to be illegal, may be appealed by the interested party to the Court of Appeals of Santiago, where the hearing shall be conducted in a chamber thereof, in the manner, and under the terms and conditions set forth in this Title.

The period for submitting such appeal shall be fifteen business days counting from the date notice of such decision, regulation, resolution, order or instruction being appealed is served.

At the time of the filing of the appeal, a certificate of deposit extended to the order of the court in an amount equivalent to one per cent of the aggregate amount of the transaction or of the damage being claimed must be attached. For purposes of calculating such percentage, the greater value resulting thereby shall be considered. In any event, the maximum amount of the deposit shall not exceed six hundred monthly tax units.

**Section 70.** The claimant shall clearly state in his writ the legal provision he deems to have been violated, the manner in which such violation occurred, the reasons why such decision, regulation, resolution, order or instruction caused harm to him and the estimated amount of the damages.

The court may declare the appeal inadmissible if the writ fails to comply with the above requirements or if the deposit is not made in the manner provided for in the preceding Section.

**Section 71.** Should the court agree to take knowledge of the appeal, it shall allow the Bank a period of ten business days to file the answer to the claim.

Once the writ of answer of the Bank has been filed or its failure to do so within the legal period has been declared, the court shall, if it deems it fit, open a period for the production of evidence, not to exceed fifteen days, and then shall issue its decision forthwith or after a hearing, within the period of 30 days, which decision may be appealed within the period of five business days to the Supreme Court. Such appeal shall be decided without requiring the appearance of the parties and without a hearing, forthwith or after the case is informed to the court by a court official.

**Section 72.** Should the appeal be finally rejected, the amount of the deposits referred to in Section 69 shall be lost to the claimant, unless the court determines that there were plausible grounds for the appeal.

**Section 73.** Should the appeal be sustained, the court shall order all appropriate measures in order to provide prompt and effective remedy to the event or action that gave rise to the appeal and the amount of the deposit shall be returned to the claimant. Once the judgment has become final, the party having obtained the judgment may have recourse to the ordinary courts of law to sue for damages and for the application of penalties as applicable in accordance with general rules.

**Section 74.** In cases where the legal provisions deemed violated are those contained in Decree Law 211 of 1973, the affected party may file a complaint with the Commissions established thereunder in accordance with the procedure established thereby, but only within the period specified in the second paragraph of Section 69.

1. Paragraph amended, as it appears in the text, by Section 22 of Law 19.041, published in the Official Gazette on 11 February 1991, and by Section 15, letter a) of Law 19,705, published in the Official Gazette on 20 December 2000, and by Section 21 of Law 19,913, published in the Official Gazette on 18 December 2003.
2. Paragraph replaced, as it appears in the text, by Section 15, letter b) of Law 19,705, published in the Official Gazette on 20 December 2000.

## **Title VI: Financial statements and surpluses of the bank**

**Section 75.** The Board shall, with a prior favorable report from the Superintendency of Banks and Financial Institutions, issue the regulations containing the requirements and general conditions to which the financial statements of the Bank shall conform, to be prepared for periods of one year ending on December 31 of each year.

Such financial statements, together with the notes and the opinion referred to in the second paragraph of Section 76, shall be published in the Official Gazette and in a newspaper of nationwide circulation before April 30 of each year. The Bank shall also publish a monthly financial statement.

**Section 76.** Prior to January 31 of each year, the General Manager shall submit to the Board for its decision the financial statements for the last fiscal year, audited as provided in the following paragraph.

The financial statements shall be accompanied with an opinion issued by external auditors appointed by the Board from among those auditors registered with the Superintendency of Banks and Financial Institutions.

**Section 77.** Surpluses resulting in each fiscal year shall be applied in the order of priority set forth below in this Section, to the following purposes:

1. Up to 10% of the aggregate amount of said surpluses to constitute reserves, provided the Board so decides;
2. The resulting balance, after the application as provided in the preceding subparagraph, to fiscal revenue, unless the whole or part is applied by law to increase the capital of the Bank or its reserves.

Any deficit from any fiscal year shall be offset against existing reserves.



**Section 78.** The Bank shall prepare a report regarding its previous year's activities providing information on the execution of policies and programs carried out in such period, including the financial statements with their respective notes and the opinion referred to in the second paragraph of Section 76.

**Section 79.** The report shall be available to the public at the offices of the Bank and shall also be submitted to the Minister of Finance and to the Senate, prior to April 30 of each year.

**Section 80.** Prior to September 30 of each year, the Board shall submit to the Minister of Finance and to the Senate an evaluation of progress made regarding the policies and programs for the current year, together with a report on proposed policies and programs for the next calendar year, stating the general economic projections on which such information is based and the possible effects they may have on major items in the financial statements of the Bank projected for such period.

## **Title VII: The Personnel of the Bank**

**Section 81.** The working relationship between the personnel of the Bank and the Bank shall be governed by the provisions of this Act and, in the absence of special provisions thereof, by those of the Labor Code and other legal provisions applicable to the private sector. Under no circumstances shall general or special regulations issued for the public sector apply to the Bank staff.

The incompatibilities set forth in Section 14 of this Act shall also be applicable to those persons acting in the capacities of General Counsel and General Auditor. The Board may render applicable all or some of the incompatibilities under Section 14 to Bank attorneys, other high-ranking officials of the Bank and specified staff members, considering the responsibilities entrusted to them. Board Members shall be considered as private sector employees for purposes of social security contributions.

The Staff Regulations referred to in subparagraph 6 of Section 18 hereof shall govern the working relationship between the bank and the members of the staff and shall contain at least rules for making appointments and filling vacancies, the mechanisms for promotions, and the systems for job training and work performance rating.

**Section 81 bis.** No person dependent on illegal narcotic drugs or substances shall occupy the position of director, or an equivalent post, unless that person justifies such consumption is for the purpose of medical treatment. Prior to taking office, the interested person shall file a sworn declaration that he is not affected by this incompatibility. (1)

The Staff Regulations shall establish rulings to prevent undue consumption of narcotic drugs and substances.

These Regulations shall also specify a procedure for monitoring consumption among persons referred to in the first paragraph. Such monitoring procedure shall be applied to all the members of a randomly-chosen group or section of executives; it shall be applied discreetly, safeguarding the individual's dignity and integrity, in conformity with Law No. 19,628 on protection of personal information. A medical certificate, based on the corresponding examinations, shall be the only acceptable proof of drug dependence.

Any executive found subject to the incompatibility referred to in the first paragraph, together with his admission of the same to his superior, shall be assigned to a treatment and rehabilitation program in one of the institutions authorised by the Regulations. If (s)he completes this program satisfactorily, (s)he must then pass

a toxicological and clinical consumption control, always in conformity with the safeguarding mechanisms referred to in the preceding paragraph. Nevertheless, rules on health conditions that are incurable or incompatible with the job shall still be applied when necessary.

1. Section interpolated, as it appears in the text, by Section 74, letter b) of Law 20,000 published in the Official Gazette on 16 February 2005.

## Title VIII: Miscellaneous provisions

**Section 82.** Resolutions adopted by the Bank shall be binding upon public sector agencies having the necessary regulatory authority to carry them out, which shall issue the pertinent instructions under the terms set forth by the Council of the Bank for such purpose. The supervision of compliance with the policies and regulations issued by the Bank shall be made through the appropriate supervisory authorities, without prejudice to the power of the Bank to exercise said authority directly in matters regarding foreign exchange. To this end, the Bank shall have the authority to examine without any restriction whatsoever and through all the means it may deem fit, all books, accounts, files, documents and correspondence of the institutions bound by said regulations, and request from their managers and other personnel all the information and explanations it may deem necessary for due clarification of specific situations. It shall further have the authority to request information, records, or general or specific data regarding the transactions related to policies and resolutions adopted by the Bank and to request from supervisory authorities, as the case may be, information, records or reports regarding the control they may exercise over such policies or resolutions.

The corresponding supervisory authorities shall keep the Bank timely informed of violations the entities under their supervision may have incurred with regard to the provisions of this Act or the regulations issued by the Bank and inform, as the case may be, of the penalties applied to such entities pursuant to the provisions of the first paragraph of this Section.

**Section 83.** The Bank shall have the exclusive authority to construe administratively its own decisions, regulations, resolutions, orders or instructions, without prejudice to the legal competence of the courts of law.

**Section 84.** The documents evidencing the authorizations granted by the Bank in the exercise of its powers and authority under this Act shall be deemed to be public documents.

**Section 85.** With regard to international agreements whose main purpose relates to business or transactions of an economic or financial nature entered into by the Bank, the Bank may submit to the jurisdiction of foreign courts and agree to the applicability of foreign legal systems, establish domicile or appoint agents abroad, and waive its immunity of execution. In order to grant such waiver, the favorable vote of at least four Council members shall be required.

**Section 86.** The Bank shall be bound to save its books, forms, correspondence, documents, and vouchers for a period of not less than five years. The period shall be counted from the date of the last entry or from the date of issuance, whichever the case may be.

Under no circumstances may books or instruments related directly or indirectly to any pending business or legal action be destroyed.

**Section 87.** Legal provisions containing regulations whereby reference to the exchange rate fixed or established by the Central Bank of Chile is made, shall be deemed amended to the effect that such exchange

rate is the one that the Bank must inform in accordance with the provisions of the second paragraph of Section 44 of this Act. In the event that such references be established for tax or customs purposes, or for calculating rates or charges to be applied by public sector agencies or entities, the President of the Republic shall, by means of an executive decree issued through the Ministry of Finance and signed by the appropriate Minister within 90 days from the date this law is published, have the authority to determine the procedure for applying the exchange rate referred to in the preceding paragraph, with the power to establish the time in which it will apply, based upon dates or periods specified.

**Section 88.** Any merchandise may be freely exported or imported on the condition that legal provisions and regulations in effect at the time of the respective transaction are duly complied with. Under no circumstances may prior deposits be required for the execution of export or import transactions, nor may quotas of any nature be imposed thereon.

Notwithstanding the foregoing, a general or special prohibition may be established by means of an executive decree issued through the Ministry of Finance regarding the export or import of goods to or from, or originating in, countries where restrictions on goods proceeding to or from Chile have been imposed.

**Section 89.** The following legal statutes and provisions are hereby repealed: Law N° 16,101; Section 244 of Law N° 16,464; Section 23 of Decree Law N° 233 of 1974; Decree Law N° 1,078 of 1975; Decree N° 471, issued through the Ministry of Economics, Development and Reconstruction, establishing the final, coordinated and systematized text of the law on export and import trade and foreign exchange transactions, of 1977 (1); Sections 2, 3, 4 and 5 of Decree Law N° 1,444 of 1976; the second paragraph of Section 24 of Decree Law N° 3,001 of 1976, and Law N° 18,065.

The following legal provisions are hereby repealed as of January 1, 1990: Sections 3;10; the second paragraph of Section 14; subparagraph 4 of Section 15, and subparagraph 5 of Section 24 of Decree Law N° 3,475 of 1980.

The following legal provision is hereby deleted: in the single Section of Decree Law N° 2,873 of 1979, the phrase "of the Central Bank of Chile", as well as the comma (,) following.

**Section 90.** The following legal statutes and provisions shall not apply to the Bank: Decree Law N° 1,097 of 1975; Decree with Force of Law N° 252 of 1960, except Sections 36, 83 subparagraphs 4 and 13, 83 bis, 114 subparagraph a), 120, 126, 127 and 129; and Law N° 18,575.

**Section 91.** It shall be the duty of the Central Bank of Chile to perform the functions and to exercise the authority conferred upon it by the following legal provisions: Sections 1 and 5 of Decree with Force of Law N° 228 of 1960; Sections 2 and 11 bis of Decree Law N° 600 of 1974; Sections 34 subparagraphs one and 59 of Article 1 of Decree Law N° 824 of 1974; Section 23 of Decree Law N° 1,097 of 1975; Section 2 of Decree Law N° 1,183 of 1975; Sections 2, subparagraph k), 17 and 18 of Decree Law N° 1,349 of 1976; Sections 18 and 23 of Decree Law N° 1,350 of 1976; Section 19 of Decree Law N° 1,557 of 1976; Section 7 of Decree Law N° 1,638 of 1976; Sections 7, 10 bis and 21 of Decree with Force of Law N° 341 of the Ministry of Finance, of 1977; Section 13 of Decree Law N° 2,099 of 1978; Section 33 of Executive Decree N° 502 of the Ministry of Economics, Development and Reconstruction, of 1978; Section 2 of Decree Law N° 3,472 of 1980; Sections 40, 44, 45, 47, 48, 49 and 55 of Decree Law N° 3,500 of 1980; Section 3 of Decree with Force of Law N° 2 of the Ministry of Mining, of 1986; Section 1 of Law N° 13,196; Sections 1, 3, 7, 10, 13 and 15 of Law N° 18,401; Section 2 of Law N° 18,402; Sections 1, 3, 6 and 11 of Law N° 18,412; Sections 3 and 4 of Law N° 18,430; Section 2 of Law N° 18,480; Section 12 of Law N° 18,525; Section 5 of Law N° 18,624; Section 10 subparagraph c) of Law N° 18,634; Section 1 of Law N° 18,645 and Section 18 of Law N° 18,657.

The functions imposed and the authority vested upon the Executive Committee of the Central Bank of Chile by the above referenced legal provisions shall be understood to refer to the Council of the Central Bank of Chile.  
(2)

1. The repeal of referenced decree 471 enters into effect as from 19 April 1990, pursuant to ARTICLE FOUR of Law 18,840, as amended by Law 18,901.
2. Section 91 was added by Section 1, letter c) of Law 18,970, published in the Official Gazette on 10 March 1990.

## Transitory Sections

**Section 1.** Within sixty days counted from the date of publication of this Act in the Official Gazette, the President of the Republic shall, with the prior consent of the Government Junta, appoint the members of the first Board of the Bank. The individuals appointed as Members of the Board of the Bank shall remain in office for ten, eight, six, four and two years, respectively, as the President of the Republic shall determine in the corresponding executive decree of appointment. The President of the Republic shall also designate the member of the Board who shall act as Governor of the Bank for the term and in the manner specified in Section 8 of this Act.

**Section 2.** The capital of the Bank referred to in Section 5 shall be made up of the amounts entered by the Bank as capital and reserves on the balance sheet that shall be drawn up specially for this purpose at the close of business on the day before the effective day of this Act, as set forth in the first paragraph of ARTICLE FOUR. If such amounts were not sufficient to complete the initial capital, the said capital shall be completed on account of surpluses arising out of future fiscal years, in which case the provisions of subparagraph b) of Section 77 of this Act shall not apply.

**Section 3.** The debt securities referred to in transitory Section 3 of Decree Law 1,078 of 1975 shall retain their privileges thereunder.

**Section 4.** Resolutions adopted by the Monetary Council shall remain in full force and effect until repealed or amended by the relevant authority.

**Section 5.** Foreign exchange transactions authorized prior to the effective date of TITLE III, Subtitle Eight of this Act, shall continue to be governed by the legal provisions in force at the time of such authorization, unless the interested parties request the provisions of this Act to be applied to such transaction instead.

It shall be the duty of the Board to solve the difficulties that may arise out of the application of the provisions of the preceding paragraph.

**Section 6.** In the legal proceedings currently being conducted for violations of provisions referred to in Sections 23 and 24 of Executive Decree 471, of the Ministry of Economics, Development and Reconstruction, of 1977, the penalties specified under TITLE IV of this Act shall be applied by the same court presently trying the case. In such events, the judge may summon the concerned party to present evidence that in his opinion exempt him from liability, extinguish or extenuate such liability.

The decision issued by the court pursuant to the preceding paragraph, once it becomes final, shall be enforceable and the Bank shall, at its option, request its enforcement from the same court issuing the judgment

within a period of 30 business days counted from the date in which it become enforceable, or from the competent civil court in accordance with general rules of procedure.

**Section 7.** The first staff regulations regarding the personnel of the Bank referred to in subparagraph 6 of Section 18, shall be enacted within the term of 90 days counted from the date in which this Act is published.

Between the effective date of this Act and the date of enactment of the regulations referred to in the preceding paragraph, the regulations in effect during such period regarding Bank personnel, shall apply for all legal purposes.

**Section 8.** The obligation specified in Section 80 shall apply as of September 30, 1990.

**Section 9.** The amounts paid until December 31, 1989, on account of the tax established in Section 3 of Decree Law 3,475 of 1980, repealed by the second paragraph of Section 89, may be credited against duties and other charges collected through the National Customs Service, or returned under the same terms and conditions and in the same manner as established in the already mentioned Section 3.