

Draft External Circular Financial Superintendence of Colombia

On July 15, 2022, the Financial Superintendency of Colombia (“SFC” for its acronym in Spanish) published the Draft External Circular (the “Draft” or “ECP”) regarding the involvement and rendering of services to Virtual Asset Service Providers. The SFC granted a deadline until the end of Friday, August 12, 2022 to receive comments on the ECP.

The Draft proposes the addition of a chapter to the Basic Legal Circular called “Rules related to the linking and rendering of services to Virtual Assets Service Providers”. The Draft brings the regulation to be followed by supervised entities when rendering services involving Virtual Asset Service Providers (“VASPs”). The annex to the Draft defines PSAV’s as any entity not subject to the surveillance of the Colombian Financial Superintendency (“SFC”) that undertakes one or more of the following activities or operations, on its behalf or on behalf of another entity or individual related to: (i) exchange of virtual assets and cash; (ii) exchange between one or more virtual assets; (iii) transfer of virtual assets; (iv) custody and administration of virtual assets or instruments that allow the control over virtual assets; and (v) participation and rendering services related with the offer of a issuer of virtual assets and/or sale of a virtual asset”.

The Draft establishes the obligation of surveilled entities to provide sufficient information to investors on the characteristics of virtual assets, understood as “any digital representation of an asset that may be traded or transferred digitally and can be used for payments or investments”, as well as its inherent risks, particularly market and liquidity risks. Therefore, managers of investment funds and managers of private equity funds, as well as trust companies that enter into businesses where the underlying assets are virtual assets or that involve the performance of operations where the underlying assets are virtual assets; and surveilled entities that carry out the activity of distribution of foreign funds that contemplate the possibility of investing in virtual assets or perform operations whose underlying assets are virtual assets, must clearly and timely inform potential investors of the characteristics of such assets and their inherent risks, including market and liquidity risks.

The representative offices of foreign financial and securities market institutions and surveilled entities that, in the development of correspondent agreements entered into with foreign entities, promote and advertise products where the underlying assets are virtual assets, must inform in a clear and timely manner the characteristics of such assets and their inherent risks, particularly market and liquidity risks.

The Draft also states that surveilled entities that allow the use of their platforms to carry out transactions with PSAV's, must comply with the security and quality criteria for the performance of transactions, including adequate risk mitigation mechanisms related to the use of their channels (operational risks, cybersecurity, money laundering and financing of terrorism, etc.).

Additionally, the Draft regulates the linking of PSAV's with surveilled entities, either as clients or through contractual alliances, pointing out that surveilled entities must ensure compliance of certain requirements by PSAV's. Such requirements include that the PSAV's have access to the Online Reporting System of the UIAF as an obliged subject that provides virtual asset services, has money laundering and financing of terrorism, operational and cybersecurity risk management systems; technological and operational capacity to monitor transactions with virtual assets; and provides complete and timely information on its corporate information, service channels, virtual assets subject to the services provided and the risks inherent to such assets, and the costs and fees associated with its services, among others.

The surveilled entity must inform the financial consumers, in a clear and sufficient manner, that the surveilled entity is not responsible for: the operations entered into by financial customers with PSAV's, as well as the materialization of risks inherent to said operations, materialization of events related to cybersecurity and operational glitches of the platforms of the PSAV's, and expressly warn that that the client of the PSAV assumes the effects from the materialization of the potential risks of the operations with crypto assets.

The new regulation that would be incorporated in the Basic Legal Circular states that surveilled entities must establish controls to monitor compliance with the requirements by the PSAV's and the adoption of measures in case of noncompliance.

The Draft states that the entities that are in the SFC sandbox, will have 2 months as of the date of completion of their test to implement the instructions of the circular.

If you need additional information, or require our advice on this matter, please do not hesitate to contact us.

Regards,

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