

Legal Alert: Financial Portability Act



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On 9 June, 2020 was enacted the Financial Portability Act that aims to promote and simplify financial portability for individuals and micro and small companies. To this end, the Law considers portability to be an inalienable right of customers and provides three main mechanisms:

1. Two types of financial portability are regulated. The first, **“Portability without Surrogacy”**, aims to contract products or services with a new supplier, and to obtain the termination of existing products that the client has with an initial supplier, extinguishing the guarantees that secure them. The second type corresponds to the **“Portability with Subrogation”** or **“Special Credit Subrogation”**, by which a financial provider will become, by the sole ministry of the Law, the beneficiary of the existing guarantees associated to a product, at the time of paying the initial financial provider, for which it will not be necessary to raise and constitute a new guarantee, reducing the terms and costs that this currently implies.
2. **Standardization**, through a Regulation to be issued, **of the information provided by financial service providers** with respect to their products, facilitating the client to compare them. To this end, the Law refers to the (i) Settlement Certificate regulated in the Consumer Protection Law that contains information on the costs of their products in force, and creates and regulates the content of the (ii) Portability Offers that will contain information on the costs of the new products offered.
3. In addition, **the Law regulates the process of portability**, specifying the stages, terms, formalities and information to be

provided by each of the parties involved, as well as the interests accrued during said process and the charges or rights to which Public Notaries and Real Estate Registry are entitled.

- **Subjects of the Law**

This law shall apply to **financial service providers**, understood as any bank, insurance company, or any other entity supervised by the Financial Market Commission. By the other hand, the Act considers **customers** to be natural or legal persons who hold one or more financial products or services, and who are consumers or micro or small businesses.

- **Portability Procedure**

- a) It starts with the request for portability presented by the client to a new financial supplier.
- b) The new supplier must request from the initial supplier the certificate of settlement, and the certificate of payment of stamp tax.
- c) In case the new supplier decides to persevere in the process, he must send the client a portability offer.
- d) With the acceptance of the offer, the client grants a termination mandate to the new supplier regarding the products to be transferred, which must be fulfilled within a period to be defined by the Regulations, which cannot exceed 6 banking business days.
- e) The new supplier must make the arrangements to sign the products.
- f) In the case of guarantees on assets subject to the registration system, the new credit must comply with the legal formalities for its granting, and which are necessary to record the respective special credit subrogation. Thus, registration will be a formality of publicity, necessary to make it effective against third parties, and not for validity as provided in Article 2410 of the Civil Code with respect to the mortgage, which provides that if this requirement is not fulfilled, the mortgage will have no value.

- **Infringements to the Law**

Violations of the provisions of this Act shall be punished in accordance with the Criminal Code, the Consumer Protection Act, notwithstanding other civil, criminal or administrative penalties that may apply.