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Law passed that limits interest rates to be charged by financial institutions

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Law No. 31143 (the "Law"), a law which protects consumers of financial services from usury and has set forth maximum interest rates that financial entities can charge, was published in the Official Gazette on March 18th, 2021.

The Law has amended Articles 6 and 11 of Law No. 28587, the Complementary Law to the Consumer Protection Act for Financial Services, and Articles 9, 211, 249 and 358 of Law No. 26702, the Financial and Insurance Systems Act, to establish that default and compensatory interest rates charged by financial institutions must be within the limits set by the Central Reserve Bank of Peru ("CRB").

Also, this amendment sets forth that the maximum default interest rates that financial entities can charge to their clients are the same rates as the ones published by the CRB for operations outside of the financial sector. Additionally, in cases of late payment or non-payment of credits, interest capitalization and charging other penalties or expenses is prohibited.

Furthermore, the amendment also sets forth that commissions and expenses charged by financial institutions must correspond to additional or complementary services provided by the institution. These commissions and expenses must be supported by a technical, economic and legal report filed before the Superintendency of Banking, Insurance and Pension Administrators (the "Superintendency"). The Superintendency will review this report and approve the commissions and expenses. In this sense, the Superintendency will have authority to sanction abusive clauses regarding interest rates, commissions and expenses, and will issue legislation that prohibits including these clauses in agreements.

Regarding insurance policies, the Law sets forth that insurance companies can freely determine the conditions of insurance policies, but that tariffs and other commissions will be approved and supervised by the Superintendency.

Finally, the Law sets forth that the crime of usury regulated in Article 214 of the Criminal Code is also applicable to financial intermediation activities. This crime is committed when a person forces another person to pay or to agree to pay an interest rate that surpasses the limits established by law. This crime is sanctioned with a jail sentence of between 1 and 3 years, and between twenty to thirty “*días multa*”¹. In case the aggravated party is in a state of need, the crime will be punished with jail time of between 2 to 4 years. In this sense, the Law has set forth that the Superintendent of the Superintendency has powers to sanction and report financial institutions before the Public Ministry.

It is also important to notice that the complementary dispositions of the Law regulate relevant matters:

- Financial institutions can amend credit agreements and refinance credits when a state of emergency is declared. To this end, the Superintendency will issue procedures to address clients with temporary difficulties and to determine alternatives in accordance with their financial capacities. This will not mean an increase on interest rates or expenses.
- For operations where there is credit life insurance, financial entities have to offer at least one alternative of credit life insurance with refund. Also, the client can choose to hire independent insurance, which will not mean payment of higher commissions or expenses.
- When a client pays a credit in full, the financial institution must automatically issue, within 7 business days, a certificate stating the client owes no debts under that particular agreement, and release the warranty or mortgage associated with that credit.
- Inter-province commissions charged when the client withdraws money from an ATM or from bank tellers located in a city different from where the account was opened has been eliminated for debit card agreements.
- No memberships can be charged for credit cards, unless both parties agree.

About Payet, Rey, Cauvi, Pérez Abogados

Founded in 1996, Payet, Rey, Cauvi, Pérez Abogados is one of the preeminent law firms in Peru, with extensive experience in providing high value-added services for all types of business activities.

Our full-service practice covers all areas of business law, including mergers & acquisitions, banking and finance, capital markets, project financing, real estate, foreign investments and privatizations, competition & antitrust, natural resources, environment, administrative and regulatory law, intellectual property, tax law, labor law, dispute resolution and economic criminal law.

¹“Días multa” is a unit used by the Criminal Code to calculate the fine to be paid in favor of the State. The amount per “día multa” is calculated as a % of the offender’s daily income that varies between 25% and 50%.