

BILL OF LAW TO ENHANCE SERNAC AND IMPROVE THE PROTECTION OF CONSUMERS IS SUBMITTED

On September 5th, 2023, the Executive submitted a new bill of law to amend Law No. 19,496, on the Protection of Consumers' Rights ("CPL"), to improve the protection of the rights of consumers in their individual interests, by strengthening the National Consumer Service ("SERNAC") -[Bulletin No. 16,271-03](#) (hereinafter, the "Bill"). The Bill is known as "SERNAC Te Protege" (SERNAC Protects You) because it intends to grant SERNAC sanctioning powers.

Among the main ideas of the Bill and the most important modifications to the current regulations are:

New attribution of SERNAC to initiate sanctioning procedures

The Project aims to change the role of SERNAC in the area of the individual interest of consumers, granting it the power to sanction, with the exclusion of infringements to the CPL that affect the collective and diffuse interest.

To comply with the above, it is intended to create an administrative sanctioning procedure that will be overseen by the Subdirection of Sanctioning Procedure, an independent, specialized, and centralized subdirection of SERNAC.

If an infraction is proven, such proceeding may culminate with:

- The application of the fines set forth in the CPL.
- Ordering the ceasing of the conduct.
- Order the restitution of the amounts charged in violation of the CPL, with readjustments and interests.
- Impose other measures designed to correct or prevent the reincurrence of the infringement committed.

The Bill expressly prescribes that the decision of SERNAC may never entail the declaration of nullity of contractual clauses, nor the determination of damages, matters that will be the exclusive competence of the competent courts of justice.

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Likewise, the Bill contemplates coordination mechanisms (with mechanisms of inhibition and regulatory coordination); a recourse system for suppliers (reconsideration; hierarchic appeal; and illegality claim); and incentive mechanisms to favor the delivery of effective solutions and reparations to consumers over the application of sanctions.

Legal recognition of the claims management procedure before SERNAC

Complaint management by SERNAC would be legally recognized and regulated, and the solutions reached in such instance would be given legal value.

In this line, the Bill provides that the following constitute infringements to the CPL:

- The unjustified absence of response to the claim by the supplier.
- Failure to comply with the terms of the solutions offered during the management of the claim by SERNAC.

In case the consumer accepts the supplier's proposal, such understanding will be materialized in an agreement that will have the character of extrajudicial transaction, extinguishing the claimant's action to pursue the supplier's liability once its stipulations are fulfilled.

To encourage attractive solutions to be offered and agreements to be reached at this stage, the Project establishes "Chinese walls" between the Subdirection that carries out the claim management process and the new sanctioning Subdirection. It is also recognized that the provision of alternative solutions by suppliers does not imply recognition of responsibility in the sanctioning procedure.

Strengthening of individual mediations that can be carried out by Consumer Associations

The Project reinforces the role of consumer associations in mediating individual conflicts through two reforms:

- Extending its application to those micro and small businesses that, in accordance with article nine of Law No. 20,416, exercise rights as if they were consumers.
- Granting executory merit to the mediations, if such associations are

accredited under the terms to be established in a regulation issued by the Ministry of Economy.

Recognition of the general interest of consumers

The Bill recognizes the existence of the general interest of consumers which, until now, had been a case-by-case construction recognized and exercised by SERNAC through the so-called "general interest proceedings".

Post-sale obligation to consumers

The Bill seeks to establish a new and improved after-sales standard, making it mandatory to receive, register, and respond to the requests made by consumers, without prejudice to the management of the claim made by SERNAC. Recognizing that the challenges faced by companies may vary depending on their size, the Project considers a differentiated treatment for the new after-sales standard according to the size of the company, also considering the reality of medium-sized companies.

Extrajudicial and judicial collections

The Bill intends to reduce the maximum ceilings that may be charged for extrajudicial collections, establishing that amounts exceeding 5 UF or 2% of the amount of the overdue debt, if the latter is lower, may not be charged. Companies must provide express information on the number and description of the debt collection procedures.

In the case of legal fees, it is expressly established that their valuation will always be subject to the general rules, i.e., the judicial valuation that occurs at the stage of determination of personal costs.

Acceleration clauses

Acceleration clauses will be considered abusive when the default is not directly related to the credit operation, or when the delay in payments by the consumer is less than 20% of the overdue debt.

Obligation of companies to maintain channels for modification or termination of contracts or "Me Salgo Altiro (I'm out at once)"

The Bill establishes the obligation of companies to maintain the same contracting channels to modify or terminate contracts.

Online platforms

The Bill extends to consumers the liability of the e-commerce platforms in the commercialization of goods and services, without prejudice of the right of these platforms to repeat against those who are responsible (e.g. the seller).

Extension of the scope of application of the Consumer Law to contracts of promise of purchase and sale of housing

The Bill intends to expressly establish that contracts of promise of sale of housing -as well as contracts of sale- are subject to the provisions of the CPL.

Decent treatment

The Bill seeks to raise the standard of conduct of companies, obliging them to guarantee sufficient attention and dignified and equitable treatment to consumers, especially bearing in mind the category of vulnerable consumers.

Non-sexist advertising

The Bill prohibits the promotion or use of stereotypes that justify or naturalize relations of subordination, inequality, or discrimination based on sex, gender, or sexual orientation in advertising.

“Cooling-off” period in the case of pre-approved loans

The Bill sets forth a period of 24 hours to make available the funds derived from a pre-approved credit or quota, so that the consumer has an appropriate time to evaluate its acceptance and, if so deemed, to retract it.

Funeral market

The Bill extends the prohibition of tied sales to funeral service companies, which currently exist for telecommunication and insurance contracts.

Extension of the pro-consumer principle

Although Law No. 21.398 expressly recognized the pro-consumer principle to interpret the rules of the CPL in favor of consumers, the Bill legally clarifies that other rules establishing rights in favor of consumers, as well as those regulating the procedures that guarantee

their exercise, are also subject to this principle.

Contractual relationship and onerousness in consumer relations

The Bill aims to eliminate the requirement of a contractual relationship between the affected consumers and the infringing company as a requirement to sue collectively. It also seeks to modify the current definition of consumer to eliminate the requirement of an "onerous legal act" to qualify as a consumer.

Settlements in consumer lawsuits

The Bill specifies that the review by the courts of agreements reached in consumer lawsuits must pay special attention to the right of consumers to be fully and timely repaired.

SERNAC Reports

The Bill establishes that those reports prepared by SERNAC with the information gathered through the exercise of its legal powers and/or information provided by companies will enjoy legal presumption when they contain a list of the sources and documents taken into consideration during their preparation, assimilating it to the general rule of the acts of the administration.

Power to appoint ministers of faith

The Bill allows SERNAC officials, subject to certain requirements, to serve notices in proceedings in which SERNAC is a party.

Deferred entry into effect

Finally, the Bill establishes rules for its deferred entry into force:

- The amendments to the CPL with the purpose of reinforcing or recognizing the rights of consumers will become effective 12 months after the publication of the law in the Official Gazette.
- The amendments related to the creation of a complaints management procedure and the sanctioning procedure will have a gradual entry into force and by regions, with vacancy periods of 18, 24, or 30 months from the date of publication of the law in the Official Gazette, depending on the region.

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