



June 6, 2010

LEGAL ALERT

Carey News Alert Law: Law 20,146 (“SMB Statute”) and its impacts on consumer protection

A new law that sets special norms for small and medium-size businesses entered into force last February 3rd 2010 in Chile. Law N° 20.416 protects SMBs with provisions of the Consumer Protection Law, including the possibility of filing class actions.

****Executive Summary****

On February 3, 2010, Law 20,416 (“SMB Statute”) was published in the Official Gazette, which establishes special rules for Small Size Businesses (“SSBs”).

The new law defines, for the first time ever, what are micro, small and medium-sized businesses, on the basis of the sales revenues:

a) Micro business: Annual sales and service revenues (net of VAT and excise tax) of up to 2,400 UF.

****b) Small business:** Annual sales of 2,401-25,000 UF.**

c) Medium-sized business: Annual sales of 25,001 – 100,000 UF.

This new law makes most of the provisions under the Consumer Protection Law extensive to SSBs with regard to supplier relations. In other words, SSBs are “consumers” in their relations vis-à-vis their suppliers.

Consequently, in their relations with customers that qualify as MSBs, companies must implement the principles recognized in this Law and which fall back on the Consumer Protection Law, which will require businesses to review practices and processes such as mass contracting, remote contracting, warranties, advertising and information to SSBs.

Moreover, SSBs may file class action suits against their suppliers, either directly or through the trade associations to which they belong.

****I.-Modifications in relation to Consumer Protection:****

The most relevant innovation introduced by the new law in this sphere was to provide that micro and small-sized companies ("MSBs") generally have the same rights as any consumer does when they purchase from their suppliers, and these rights cannot be subject to ex-ante waivers.

Consequently, some provisions under the Consumer Protection Law are applicable to consumer relations between small and micro businesses. Following are the matters considered most relevant.

a) Consumer rights and duties: the right to retract is applicable to relations between SSBs and their suppliers, and the most general principles that regulate consumer relations: i) right to receive true, timely information, ii) non-discrimination; iii) free choice of goods and services; and iv) total safety and repair.

Suppliers must therefore adhere to the aforementioned principles in their relations with SSBs.

b) Supplier obligations: suppliers are required to comply with the terms, conditions and modalities on which it offers or agrees to provide a service.

Likewise, electronic contracting of goods and services between SSBs and suppliers must adhere to the provisions under the Consumer Protection Law in all matters relating to the creation of consent, confirmation of contracting, complete and clear access to contractual terms, among other things.

c) Conscionable stipulations and performance of adhesion contracts: adhesion contracts used by suppliers cannot include unconscionable clauses. Otherwise, those clauses or the contract in its entirety may be voided.

Likewise, all formal requirements for adhesion contracts must be complied with (legibility, font size and language).

d) Liability for breach: the provisions related to product warranties will apply to relations between SSBs and their suppliers, with a statutory warranty in favor of SSBs.

Likewise, electronic contracting of goods and services between SSBs and suppliers must adhere to the provisions under the Consumer Protection Law in all matters relating to the creation of consent, confirmation of contracting, complete and clear access to contractual terms, among other things.

c) Conscionable stipulations and performance of adhesion contracts:

adhesion contracts used by suppliers cannot include unconscionable clauses. Otherwise, those clauses or the contract in its entirety may be voided.

Likewise, all formal requirements for adhesion contracts must be complied with (legibility, font size and language).

d) Liability for breach: the provisions related to product warranties will apply to relations between SSBs and their suppliers, with a statutory warranty in favor of SSBs.

e) Information and advertising: provisions related to advertising, spamming, promotions and offers shall apply to SSBs in their relations with suppliers.

****f) Promotions and offers:** see e) above.**

g) Credit: if suppliers extend credit to SSBs in the purchase of goods or services, all the regulations under the Consumer Protection Law must be complied with in relation to reporting and collection duties.

****II.- Role of SERNAC****

SERNAC has no competent jurisdiction in relation to MSBs, i.e. it cannot mediate to look for an out-of-court solution (as it does with other consumers).

Now, the SMB Statute says that MSBs do have the right to press charges for violations of the Consumer Law at a Local Police Court (the court seated at the location where the violation took place or where the act or contract was performed or executed or performed is competent, at the plaintiff's discretion), thus pursuing all the sanctions and indemnifications deemed applicable (all governed by the Consumer law). Also, MSBs can file class action suits. Trade associations that group said MSBs may also bring class actions.

To impose fines, the judge must be particularly mindful of the amount of the claim, the objective parameters that define the supplier's duty to act professionally, the extent to which information is asymmetrical between the offender and the victim, the benefit obtained from the violation, the seriousness of the damages caused, the risk to which the victim or community is exposed and the financial situation of the offender.

Please contact us if you have any doubts or questions.

Kind regards.

Authors: Guillermo Carey; José Ignacio Mercado