

CONSUMER LAW AND SERNAC'S SUPERVISORY ROLE FACING COVID-19 PANDEMIC

Covid-19 has had an impact on ongoing consumer contracts and their relations with suppliers. The rapid spread of the virus led the authorities to declare State of Disaster in the country, raising concern about the (i) fulfillment of consumer contracts of goods and services and (ii) an eventual price manipulation.

The authority in charge of protecting consumer's rights, the National Consumer Service ("SERNAC"), exercising its supervisory powers, has reacted actively in this regard and has set guidelines for companies.

SERNAC has analyzed various scenarios resulting from consumer contracts that have been affected by the coronavirus pandemic, establishing guidelines such as:

- (i) in case of mass events cancellations, suppliers must comply with timely informing the suspension of the event, the protocol to reimburse consumers or the eventual rescheduling of the event;
- (ii) in case of cancellation or rescheduling of flights by airlines or travel agencies, it is expected that companies apply objective and flexible reschedule policies and protocols to allow the provision of the services and avoid further damage to the consumer;
- (iii) for services that are not provided, companies should have to deduct the time in which the services were not available to the public.

In the same line, to avoid any attempt of price manipulation, SERNAC has paid special attention on online sales platforms, requiring:

- (i) the blocking of sellers that apply disproportionate prices and conditions for the acquisition of commodities to avoid coronavirus;
- (ii) improved filters to avoid scams and misleading advertising related to the contingency; and
- (iii) monitoring, reviewing, checking and downloading publications that take advantage of the emergency to deceive consumers.

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43.
Las Condes, Santiago, Chile.
www.carey.cl

On November 2019, SERNAC published an Interpretation document regarding continuity of services in case of exceptional events, which validated the possibility that suppliers, facing a fortuitous event or force majeure, may excuse themselves from not providing the service or delaying the delivery of products during the time the exceptional events last, as long as they comply with the duty to inform consumers in accordance with objective parameters and the requirements of good faith.

In our country, Law No.19,496 the Consumer Protection Act ("CPA") does not regulate exceptional situations that may alter the normal execution of consumer relations, therefore each contract must be analyzed with its particularities in order to balance the supplier's professionalism duty and the basic rights of consumers in exceptional situations such as the Covid-19 pandemic.

Based on the professional standards demanded by SERNAC in case of exceptional situations and the full compliance with the provisions of the CPA, we recommend:

- (i) To revise consumer contracts to examine if they contain provisions that consider exceptional scenarios such as force majeure.
- (ii) To inform consumers in a clear, truthful and timely manner of the existence of exceptional events that may have an impact on the fulfillment of the contracts.
- (iii) To adopt measures that protect the consumer's right to safety in the consumption of goods and services and their health, avoiding any possible risks.
- (iv) To adopt all reasonable measures to moderate or limit the eventual damages caused by exceptional circumstances, avoiding further damages to consumers.

Autores: Guillermo Carey; Aldo Molinari; Kureusa Hara; Eduardo Reveco