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INTERPRETATIVE GUIDELINE ON THE SCOPE AND CONTENT OF COMPLIANCE PLANS IN REGULATIONS REGARDING THE PROTECTION OF CONSUMER RIGHTS

On December 20 2019, the National Consumer Service **(SERNAC)** published the **"Interpretative Guideline of Compliance Plans",** which seeks to provide guidance to suppliers about the scope and basic contents of the compliance plans contemplated in Law No. 19,496 on the Protection of Consumer Rights **("CPA").**

This Guideline is subject to a public consultation. Comments can be entered in SERNAC´s website (https://www.sernac.cl/portal/618/w3-article-57789.html) until January 7 2020. After this process, this guideline could suffer modifications.

Hereunder, you will find a brief presentation of the content of SERNAC´s guideline.

WHAT IS A COMPLIANCE PLAN?

The purpose of a compliance plan is to structure an organization's risk management system. It can be defined as the set of internal measures adopted to prevent, detect and mitigate the risk of infringing the duties of conduct required by the organization, either by their own actions or omissions, those of their representatives, advisors, dependents or collaborators, including service providers and the processes that, according to the law, are under their responsibility.

It is important to note that, there is not a unique model of compliance plan, so they should be designed according to the particular characteristics of each organization.

COMPLIANCE PLANS IN THE CPA AND ROL OF SERNAC

The CPA regulates compliance plans in two articles: article 24 subsection 4 and article 54 letter P.

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

1. **Preventive compliance plan of article 24 subsection 4**

Article 24 subsection 4 provides that mitigating circumstances will be considered in the context of the application of sanctions to suppliers that violate the norms of protection of consumer rights. **"c) The substantial collaboration that the offender has provided to the National Consumer Service, before or during the administrative sanctioning procedure or the one that has been provided in the judicial procedure. It will be understood that there is a substantial collaboration if the supplier keeps a specific compliance plan in the matters referred to in the respective infraction, which has been previously approved by the Service and its effective implementation and monitoring is accredited".** This article refers to a preventive compliance plan. In this case, the company analyzes and evaluates its infringement risks before it has been committed, to establish preventive, detection and corrective measures pertaining to such risks.

Thus, the approval through an administrative process provided by SERNAC and validated by it, implies that the provider has provided "substantial collaboration" prior to the judicial procedure, and that, complying with the other legal requirements, will be considered as a attenuating circumstance when determining the fine associated with the offense committed, in said procedure.

2. **Compliance plan within the voluntary procedure of article 54 P**

Article 54 letter P indicates that, in case of reaching an agreement within the voluntary procedure for the protection of the collective or diffuse interest of consumers, the Service will issue a resolution that will establish its terms and the obligations assumed by each of the parts. Thus **, "the resolution may contemplate the presentation by the supplier of a compliance plan which will contain, at a minimum, the appointment of a compliance officer, the identification of corrective or preventive actions or measures, the deadlines for its implementation and a protocol designed to avoid the risks of non-compliance".** In this way, the compliance plan within the voluntary procedure aims to account for a double, reactive and preventive action. According to the nature of the infraction, the plan would be part of the agreement reached. Together with this, the Service could assume the monitoring and follow-up, since it is understood that, a disagreement in the implementation of said plan would lead to a breach of the agreement reached in the collective voluntary procedure.

CONTENTS OF THE COMPLIANCE PLAN

Taking into account the provisions of article 54 P of the CPA, the National Consumer Service considers that the compliance plans must contain at least the following central elements for the implementation of effective instruments:

1. **Appointment of a compliance officer**
2. **Identification of corrective or preventive actions or measures**
3. **Deadlines for implementation**
4. **Protocol destined to avoid the risks of non-compliance**
5. **Commitment of senior and middle management**
6. **Correct alignment of incentives and application of disciplinary measures**
7. **Reaction against findings**
8. **Continuous improvement, periodic tests and review**
9. **Monitoring and follow-up by SERNAC**

Notwithstanding the foregoing, the Service may request information regarding the compliance plan at any time and make observations, as well as substantiated proposals for accommodations, when deemed appropriate.

Finally, the regulation that disciplines the system that will guide and complement the compliance plans, it is still pending in the Ministry of Economy.

Authors: Guillermo Carey; Aldo Molinari