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NEWS ON THE BILL REGARDING THE STRENGTHENING OF SERNAC

On June 2, 2014, President Michelle Bachelet presented to Congress a bill to modify Law N° 19,496 on the Protection of the Rights of Consumers ("CPA") –Bulletin N° 9369-03.

Currently, this bill is in its second constitutional stage of processing before the Senate, pending the publication of the second report of the Constitution, Legislation, Justice and Regulation Commission.

The president of the aforementioned commission has stated that there is an agreement with the Executive branch in order to finish the processing of certain bills which are high priority for the Government, before the end of the legislative year (January 2017). The bill for the modification of the CPA is among these bills. According to said agreement, on December 14, 2016, the Government

instructed sum urgency for this bill1.

Please find a summary of the main lines and modifications contained in the bill herein:

I. NEW AUTHORITIES OF SERNAC

The bill aims to significantly increase the authority of the National Consumers Bureau ("SERNAC" for its Spanish acronym) regarding supervision, sanctioning, regulation and interpretion of the law.

•**Supervision:** The bill confers upon SERNAC the ability to enter into those facilities in which suppliers develop their activities in order to determine if the law is being fulfilled. This ability may be exercised with the assistance of the police in case the supplier does not cooperate with the supervision process. Also, in this context, the Bureau has the authority to require that a company present any document, book or information that is necessary for the supervision process, and to subpoena the legal representatives, administrators, advisors and other dependents of the company regarding the facts subject to these proceedings.

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•**Sanctioning:** The bill gives SERNAC the authority to directly sanction infringements to the CPA. For this purpose, the bill sets forth a new proceeding before SERNAC.
•**Regulating and interpreting:** The exercise of these new authorities will correspond to the National Director of SERNAC, and shall be approved by a new regulatory body, independent from SERNAC, named "Regulatory Counsel". This counsel shall approve or reject the regulation and interpretation proposals made by the National Director of SERNAC. According to these new authorities, SERNAC may: (i) issue rules or general instructions, in order to complement the CPA, and (ii) administratively interpret regulations that protect the rights of consumers.The bill sets forth the possibility of filing an illegality claim against said proposals before the Court of Appeals of Santiago.

II. INCREASED FINES

The bill proposes a significant increase In the fines established by the CPA. Some of the most relevant

modifications are:

Additionally, the bill establishes a system for the determination of the amount of the fines, applicable

both to judges and to SERNAC.

This new fine determination system includes several mitigating and aggravating circumstances in order to delimit the amount of the applicable fines.

1. Mitigating circumstances (decreases the amount of the fine within the set range):

1. Reparation of damage caused to the consumer before issuance of the decision or ruling, as applicable.
2. The fact that the infringing supplier is a small sized business ("SSB").
3. The fact that the supplier has collaborated with SERNAC before or during the proceeding.

2. Aggravating circumstances (increases the amount of the fine within the set range):

1. Relapse by the supplier (the supplier has already been sanctioned

for the same breach of the CPA within the last 36 months for medium or major sized businesses, or within the last 12 months for micro or small businesses).
2. Serious damage to consumers (monetary, physical or emotional) or endangerment of consumers or their community.

III. NEW SANCTION FOR SUSPENSION OF UTILITY SERVICES

In cases of an**unjustified suspension of utility services** (water, gas, sewer, electricity, telecommunications, telephone or garbage collection), the bill sets forth the obligation of the supplier to compensate the affected consumers for each day in which the service was unavailable. This compensation (punitive damage) is set on a daily basis and its**amount shall be equivalent to the fee charged for the preceeding month**, with a maximum of 12 days. According to the bill, it shall be understood that the service has been suspended for a day each time it is interrupted for four or more continuous hours.

IV. BENEFITS FOR SSBS

The bill establishes a series of measures that aim to benefit SSBs in case of potential breaches to the CPA, lowering the standard of the law in these cases. This less stringent system consists of the following measures:

1. Determination of fines: The bill sets forth a mitigating circumstance if the supplier is an SSB, and for micro and small sized businesses it shortens the term for calculating relapse periods and lowers the amount of the first fine effectively imposed by 70%, in procedures before SERNAC, among other benefits.
2. Alternative sanction in procedures before SERNAC: The fine may be replaced by the obligation to attend courses on the rights and duties of consumers, instructed by SERNAC.
3. Grace period for supervision proceeding of SERNAC: Micro and small sized businesses have a 10 day grace period to resolve those infringements detected by SERNAC on a supervision proceeding in order to avoid sanctions, as long as certain requirements are fulfilled.

V. MODIFICATIONS TO THE PROCEEDINGS OF THE CPA

1.**Proceedings before the Local Courthouses (Juzgados de Policía**

Local) Local Courthouses maintain their jurisdiction to judge cases in which consumers, individually, file an infraction and/or damages claim against the supplier.Nevertheless, there are some new aspects incorporated by the bill, among which it is possible to highlight: (i) consumers must always be represented by an attorney; and (ii) the criteria for determining the competence of the court is limited to the domicile of the consumer or the supplier, at the choice of the former.
2. New administrative sanctioning proceeding before SERNAC

This proceeding may be initiated directly by SERNAC, or through a claim filed by a consumer. SERNAC will inform the supplier of the alleged infringement, and reguest that the supplier propose a solution. In case the consumer or SERNAC do not accept the supplier's proposal, or if the supplier does not make any proposal for solution, there will be a conciliation hearing before SERNAC, which may be waived by the consumer, confirming his claim. Accordingly, the minute that declares the conciliation as failed or that confirms the claim may originate a sanctioning proceeding.

The sanctioning proceeding is substantiated by the corresponding Regional Director of SERNAC, and will be overseen by an attorney from SERNAC (instructor). This proceeding will be initiated by a resolution providing the supplier with a term of ten days in order to present its evidence and formulate its defenses (any evidentiary means is accepted).Afterwards, the instructor will propose a ruling of acquittal or sanction of the supplier to the Regional Director. Then, the Regional Director will have a term of ten days to issue a resolution confirming, modifying or overruling the proposal of the instructor.It will be possible to file an illegality claim against such resolutions before the Local Courthouse with jurisdiction in the domicile of the consumer, within a term of ten days. Also, the resolution that solves the claim will be appealable before the Court of Appeals only in cases of an amount over 25 UTM (app. USD 1,700).
3.**Class actions**One of the main modifications introduced by the bill is the possibility for consumers to request moral damages in this type of proceeding, which is currently excluded by the CPA.Another important innovation of the bill is that, in qualified cases, and only once the claim has been declared admissible, the judge may order the supplier to provisionally cease collection of any charges questioned by the consumer, as a protective remedy.The bill also establishes that the court shall have the ability to impose a fine for each

affected consumer in case the nature of the infringement justifies it, within the limitations set forth in the law (the total amount of the fines may not exceed 30% of the sales of the line of products or the service subject to the sanction during the period in which it lasted, or double the economic benefit resulting from the infringement).
4. Collective mediation

This**new proceeding** established in the bill, is a special administrative sanctioning proceeding in charge of a specialized and independent unit of SERNAC.This proceeding may be initiated by SERNAC or through a claim filed by consumers. The duration of this mediation proceeding shall not exceed three months, extendable only once, for an additional three-month period. If an agreement is not reached within such term, the mediation will be considered as failed. Additionally, the parties may express their intention not to continue with this proceeding at any stage of the mediation.

VI. NEW STUATUTE OF LIMITATIONS

The bill increases the statute of limitations for consumers or SERNAC to file an infractional claim against the supplier, from six months to two years. This new term is counted from the time in which the infringing conduct ceased.

On the other hand, regarding civil actions (damages), the bill provides that the statute of limitations set forth in the Civil Code will apply (five years for contractual liability and four years for torts).

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1 Sum urgency means that the corresponding chamber of Congress, in this case the Senate,

has 15 days to dispatch a bill.

2 UTM: Monthly Tax Unit. The value of one UTM for December 2016 is USD 68.50.

3 According to article 2 of Law N°20,416 the concept of SSB includes micro, small and medium sized businesses. In this sense, micro sized businesses are those companies with annual sales of app. USD 94,000 or less; small sized businesses are those companies with annual sales over app. USD 94,000 and of no more than app. USD

980,000; and medium sized businesses are those companies with annual sales over app. USD 980,000 and of no more than app. USD 4,000,000.

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