

REGULATIONS GOVERNING MEDIATION, CONCILIATION AND ARBITRATION IN CONSUMER MATTERS ARE PUBLISHED

On December 13th, 2022, Decree No. 84 was published in the Official Gazette approving the Regulations governing mediation, conciliation, and arbitration in consumer matters, which will enter into force six months after publication, that is, on June 14th, 2023.

The issuance of this regulation is framed in the recent entry into force of the Pro-Consumer Law that seeks to encourage consumer protection.

The regulation will be applicable to resolve any individual conflict between a consumer and a supplier, in whose facts Law No. 19,496 is applicable and if the supplier has mechanisms such as mediation, conciliation and/or arbitration for the resolution of disputes.

Below we highlight the most relevant aspects of the regulation:

Scope of application

The regulation shall be applicable to resolve any individual conflict of interest between a consumer and one or more suppliers, to the extent that some of the mechanisms are available.

Definitions

For the purposes of the regulation, a series of relevant concepts are defined, such as:

- Mediation:** Mechanism by means of which an impartial third party, with certain knowledge of the conflict, acts as amiable compositeur between a consumer and a supplier, seeking to generate consensus and agreement on the optimal solution to the consumer conflict, refraining from presenting settlement bases.
- Conciliation:** Mechanism by means of which an impartial third party called conciliator, with certain knowledge of the conflict, acts as amiable compositeur between a consumer and a supplier, trying to

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generate consensus and agreement on the optimal solution of the consumer conflict, being able to present settlement bases.

•**Arbitration:** Mechanism by means of which an impartial person called arbitrator, with certain knowledge of the conflict, of the applicable legal rules and of the evidence available to the parties, resolves a conflict by means of an award of binding content for the consumer and the supplier.

Principles

The regulation indicates that the principles that will regulate the mechanisms are the following: i) Voluntariness; ii) Free of charge; iii) Consumer indemnity; iv) Procedural economy; v) Publicity; vi) Good faith; vii) Impartiality; viii) De-formalization; and xi) Access to information.

Duty of information

Suppliers must inform prior to contracting, if they have any of the mechanisms for the resolution of disputes, complaints, or consumer claims. Said information must be available both in physical stores and on websites, as well as in the contracts entered with consumers, in a clear and prominent manner.

Consent and appointment of conciliator, mediator, or arbitrator

The consumer's consent to initiate any of the mechanisms must be given in writing or by any technological means capable of reproducing such consent. In no case may the consumer be required or obliged to submit to the mechanisms as a requirement for contracting. Once the consent has been given, the designation of the impartial third party shall be made in accordance with Article 56 A of Law No. 19,496.

Conflict resolution and enforceability

The agreements reached by the parties, or the decision adopted by the arbitrator must be reasonably founded. Likewise, the result of the solution shall be legally binding for the parties and in case of non-compliance with the agreement or award, the consumer may demand its forced compliance according to the general rules.

Obligation to inform SERNAC

SERNAC may require mediators, conciliators, arbitrators and any of

the parties, the information generated within the framework of the mechanism, to ensure compliance with the regulations and other consumer protection rules. In addition, mediators, conciliators, and arbitrators must send a copy of the awards and agreements to the service every six months.

On the other hand, suppliers must also send a report every six months detailing at least the number of cases that were submitted to any of the mechanisms, their outcome and state of execution.

Entry into force

The regulation will enter into force six months after its publication, that is, on June 14rd, 2023.

The full text of the regulation is available at the following [link](#).

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