

March 17, 2021

LEGAL ALERT

SERNAC modifies Interpretative Circular regarding the notification of breaches to financial portability regulation

On March 11th, 2021, the National Consumer Service (hereinafter “SERNAC”) published a new interpretative circular which sets rules for the **notification of breaches regarding financial portability and other monitoring data ** (the “Circular”). The Circular revokes SERNAC’s Exempt Resolution No. 627/2020, published on September 8th, 2020, which priorly governed these matters, with the purpose of ruling out the new means upon which suppliers will notify SERNAC the breaches to the financial portability regulations, along with establishing information duties which suppliers will have to provide on a monthly basis to SERNAC, for the latter to duly oversee the adequate fulfilling of the portability process regulations. Moreover, the Circular specifies that the aforementioned notification shall be delivered through an electronic mean, by attaching an excel file to the Suppliers’ Platform available at SERNAC’s website, as more detailed below.

The Circular is part of the system of Law No. 21,236 on Financial Portability, which recently entered into force and which introduced new consumers’ rights on financial portability on article 3° letter f) of Law No. 19,496 on Consumer Protection.

Moreover, Law No. 21,236’s Regulation (the “Regulation”) establishes that SERNAC through an interpretative circular, will rule out the form and guidelines upon which suppliers must notify (on a monthly basis) non-compliance reports to such authority, and to provide their responses to SERNAC’s requests for information.

How to notify SERNAC of events of non-compliance to the financial portability requirements

To adequately comply with the submission of certificates, background information and supporting documents required in Articles 5, 6 and 43 of the Regulation,

financial suppliers must monthly submit the following information to SERNAC:

- Portability Request Codes.
- Identification of the Client ("consumer" or "company").
- Date on which the client contacted the supplier.
- Initial Supplier's Tax Id Number.
- Date of contact request.
- Used contact mean.
- Document delivery date.
- Type of non-compliance ("late" or "non-delivery"; or "incomplete document").
- Type of document ("certificate of liquidation"; "stamp tax certificate"; "appraisal"; "title search"; "general proof of payment"; or "proof of payment for registration").
- If the application refers to a single or multi-product.

This information must be submitted within the first five days of the month following that in which the non-compliance occurred.

The report must include all data related to the month immediately prior to that in which the information is submitted to SERNAC.

How to notify SERNAC of additional information on financial portability processes

SERNAC will monthly request suppliers the reporting of certain data, to supervise their adequate compliance to the provisions of Law No. 21,236.

This information will consist on the following:

****2.1 Information requests to initial suppliers:****

- Portability requests that were notified to them acting as initial suppliers.
- Portability operations in which they took part, with termination or closure of products.

****2.2 Information request to new suppliers:****

- Financial portability requests.
- Portability requests rejected in total.
- Portability requests partially rejected.
- Issued portability offers.
- Accepted portability offers.

- Accepted portability offers, with a rejected contracting by the supplier.
- Consumer's withdrawals.
- Portability operations between suppliers.
- Portability operations with the same supplier.
- Average time (in calendar days) for issuing mortgage portability offers.
- Average issuance time (in calendar days) of non-mortgage portability offers.
- Average time (in calendar days) for the mortgage portability process.
- Average time (in calendar days) for portability process without mortgages.
- Month of the report.

This information must be delivered monthly, within the first five days of each following month. Such response must include data related to the calendar month immediately prior to the month in which the information is submitted to SERNAC.

Channel through which the report must be made

The report indicated in section I and the response to the request for information contemplated in section II must be delivered to SERNAC by completing an excel file and uploading it through the Financial Portability Reporting Platform, which will be available in the "Supplier's Portal" on SERNAC's website.

The format of the Excel file is currently available as an annex of the Circular and also is available for download on the Supplier's Portal.

Technical counterparts and contact channels

Financial Suppliers subject to the provisions of Law No. 21,236 must duly update their technical counterparties who will oversee the compliance of the Circular. This information should include the name, position, telephone number and e-mail address of such party.

This Circular is already available on SERNAC's website and can be reviewed at the following link, in Spanish.

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