

SERNAC'S INTERPRETATIONS ON LEGAL GUARANTEE, RIGHT OF WITHDRAWAL AND THE EXERCISE OF OTHER RIGHTS

In recent months, the National Consumer Service has published multiple opinions interpreting various rules of Law No. 19,496 on the protection of consumer rights ("CPA") that were amended in recent times, responding to practical requirements of the public, in matters of interest to suppliers and consumers.

When reviewing these rulings, it is important to remember the scope and application of the interpretations made by this service. As with the interpretative circulars that establish the guidelines that SERNAC follows with respect to certain matters, the interpretative rulings are only mandatory for SERNAC officials, therefore, for suppliers, they are only guidelines to be taken into consideration when complying with legal obligations.

Interpretations of the legal guarantee

SERNAC has indicated that for the exercise of the options contemplated by the legal guarantee, it is enough that the consumer is in one of the hypotheses of article 20 and communicates his choice for the supplier to process the request and comply with the option chosen. [Exempt Resolution No. 428 on the verification of the cases included in Article 20 of Law No. 19,496.](#)

Faced with the dilemma of whether the regulation of the legal guarantee is also applicable to services, in addition to products, SERNAC has made a distinction indicating that the former are regulated by paragraph 4 Special rules on the provision of services of Title III Special Provisions, articles 40 and 41. In this sense, if a consumer is not satisfied with the service provided, they may request either the provision of the service at no cost or the refund of the price paid within 30 days after the provision of the service, without prejudice to being able to claim for any damages. [Exempt Resolution No. 497 on the applicability of the legal guarantee to product maintenance services.](#)

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SERNAC has also ruled on the possibility that micro and small enterprises can also exercise the legal guarantee to their suppliers – a situation that is not expressly regulated by law – under the same conditions as a consumer, in accordance with article 9 of Law No. 20,416. [Exempt Resolution No. 378 on the concept of consumer for the purposes of the application of the legal guarantee.](#)

Interpretations on the exercise of the right of withdrawal

The consumer may exercise the right of withdrawal in cases where he does not have access to the good in the context of the sale of clothing, when, in the physical stores where the product is offered, the necessary facilities are not available for the consumer to try on the garments before buying. Consumers do not have access to the goods just by seeing the product. The supplier may not exclude the right of withdrawal based on reasons of consumer safety, a common circumstance during the covid-19 pandemic. [Exempt Resolution No. 376 of May 31, 2023, on the meaning and scope of the expression "direct access to the good" contained in Article 3 bis, letter c\), of the Consumer Law.](#)

SERNAC refers to the exercise of the right of withdrawal, in general and with respect to products purchased through electronic commerce platforms, indicating that it will be sufficient for the consumer to express his willingness to withdraw, without expression of cause, within 10 days from receipt of the product (in the case of sale of goods).

When returning the product to exercise the withdrawal, there is no limitation regarding the opening of packaging, the use or testing of a product (including sporting goods), so it may be returned, in any case, provided that it does not present deterioration that is attributable to the consumer and while the packaging is in "good condition", which does not amount to "intact" or "in identical condition".

Finally, with regard to the exclusion of the exercise of this right with respect to services and certain products, taking into account their nature (such as technological products from which the original packaging has been removed), SERNAC indicates that the regulation that will instruct the way in which this exclusion must be communicated is pending, as well as the goods in which exceptionally and by their nature such exclusion will proceed. [Exempt Resolution No. 496 on the exercise of the right of withdrawal.](#)

Interpretations on the origin of the consumer's withdrawal

SERNAC indicates that currently the CPA does not contemplate a legal hypothesis that allows unilateral cancellations of contracts by the consumer or the supplier. Nevertheless, it establishes that the supplier may voluntarily offer consumers the option of withdrawing from the contract or "cancelling the purchase", which will be subject to the conditions established by the supplier. SERNAC recalls that, although there is no legal recognition of the unilateral cancellations, there is a right of withdrawal, which allows the consumer to unilaterally terminate the contract under the terms of article 3 bis of the CPA. [Exempt Resolution No. 498 on withdrawal of purchase.](#)

Interpretation on the prohibition of conditioning the purchase or contracting to an exclusive means of payment

SERNAC interprets, with regard to the provisions of article 17 H, fourth paragraph, that suppliers of financial products or services may not restrict or condition the purchase of a good or the contracting of a service, to a means of payment – mechanism by which the obligation is required: money, checks or credit cards – managed and operated by the same supplier, a related company or a business support company. The foregoing does not apply to situations where the provider limits payment to a certain payment collection platform. [Exempt Resolution No. 379 on the application of Article 17 H final paragraph, current fourth paragraph of Law No. 19,496.](#)

Interpretation of the appointment of a SERNAC official to serve judicial proceedings

Regarding the notification of a lawsuit or infractional complaint filed before a local police court, by an official designated by the judge "of the public service in charge of the matter" (Article 8 of Law No. 18,287 that establishes the procedure before the Local Police Courts), SERNAC clarifies that its officials may be appointed to practice the notification, as an ad-hoc minister of faith, provided that it is a trial of general interest in which SERNAC is a party, since it is in this type of trial that the authority is effectively involved as a public service in charge of the matter pursuing a public interest. [Exempt Resolution No. 375 on the designation of SERNAC officials for the notification of judicial proceedings.](#)

Other Interpretations in Education, Aviation and Parking

In educational matters, if the agent wishes to terminate the contract for the provision of educational services, he may do so, to the extent that this corresponds to a contract of adhesion and consumption. That being the case, the consumer must pay only for the services that have actually been provided and not for the co-payment for the whole year.[Exempt Resolution No. 377 on the termination of the contract for the provision of educational services with a subsidized private school](#)

SERNAC interprets that the air passenger may notify, by any means, the transporting airline of his desire to change the flight for medical reasons, at any time, provided that it is before the scheduled time for the respective flight.[Exempt Resolution No. 426 on the terms and means by which the right of Article 133 J of the Aeronautical Code may be exercised.](#)

SERNAC determines that, in accordance with the right to safety in consumption established in article 3, letter d), of the CPA, suppliers that offer parking services, whether free or onerous, are obliged to ensure the protection of security to prevent damage and theft to vehicles and the species inside, complying with a safety standard at least comparable to that existing within their own sales rooms. It is added that, in case of damage or theft of the vehicles or the species that were inside, the supplier must respond, compensating the damages. However, it will be up to the consumer to prove that the belongings were inside, as well as their value. Finally, SERNAC emphasizes that the provision of lockers or lockers by suppliers does not exempt them from the obligation of parking security.[Exempt Resolution No. 499 on liability of suppliers for robberies or thefts in shopping center parking lots.](#)

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