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LEGAL ALERT

SERNAC’s New Interpretative Circular on the procedure for the approval of Compliance Plans under Article 24, paragraph 4(c) of Law No. 19.496

On December 9th, 2020, the National Consumer Service (“SERNAC”) published a new interpretative circular entitled "**Interpretative Circular on the procedure for the approval of Compliance Plans under Article 24, paragraph 4(c) of Law No. 19.496**" (the “Circular”), which establishes general guidelines on SERNAC's authority regarding the approval of compliance plans submitted by suppliers. The above, after its preliminary version was subject to a consultation process which ended on October 30th, 2020.

The content of the Circular focuses on the procedure for approval of compliance plans established by Article 24, paragraph 4(c) of Law No.19,496 Consumer Protection Act ("CPA"), based on the following structure:

****Compliance plan approval requirements****

For SERNAC to approve a compliance plan, the latter must:

1. Comply with the CPA and other applicable legal or administrative regulations. For the evaluation of a plan’s content, SERNAC shall consider the "INN/ET1 Technical Specification Compliance plans for the protection of consumer rights - Requirements with guidance for use"; or the one that replaces it.
2. Be accompanied along with an affidavit, signed by the legal representative(s) of the supplier, stating that the background information provided, and the information contained therein is true and accurate.

****Approval Procedure****

A supplier interested in obtaining approval of a compliance plan must apply through a downloadable form that will be available for the public on the

institutional website (www.sernac.cl).

SERNAC will process such request according to one of the available procedures at the supplier's option and depending on the provided background: (i) abbreviated procedure or (ii) general procedure.

2.1. Abbreviated Procedure

To access this procedure, the supplier must submit:

- An authorized copy of the certificate issued by an inspection body or suitable verifying entity, which certifies that plan's compliance with the CPA and other applicable regulations.
- A certification report of the respective plan, that includes documented information that certifies:
  - The realization of the analysis of the context of the organization.
  - The organization's commitment.
  - The determination of compliance objectives.
  - The treatment of non-conformities and non-compliance.
  - Conducting the performance evaluation of the compliance plan.
  - The realization of the plan improvement process.

SERNAC will decide on the application for approval within a period of up to six months counted from the day following its entry through the parties' office (Article 27 of Law No. 19,880 on Administrative Proceeding).

2.2. General procedure

Suppliers may request the approval of a compliance plan under the general procedure when they do not have the aforementioned certificate. In this case, SERNAC will hire the preparation of a technical report made by a third party, that allow the analysis of the compliance plan, without directly accessing to the information on the supplier's risks.

For this purpose, SERNAC, before entering the approval's application, will submit the plan to a prioritization procedure, addressing a risk approach and considering the budgetary restrictions in force on the period in which the applications are submitted.

The prioritization will follow the following criteria: technical criteria, teleologic criteria, necessary criteria and proportional criteria. Additionally, SERNAC will weigh the particular condition of the supplier, being micro or small

business, as those terms are established on article 2° of Law N°20.416 and according to the special treatment established by the CPA.

The prioritization will be carried out in March and August of each year, including all applications received until the last day of the month prior to such months.

Non-prioritized applications will be incorporated with future applications, to be considered, in the next prioritization process.

Only once the respective technical reports have been evacuated, the process of approval of the compliance plans will begin.

After receiving the technical report, SERNAC must notify the supplier and require them the delivery of the affidavit signed by the legal representative(s) of the supplier (as described on 1.2. above). On the next business day after receiving the affidavit, SERNAC must notify the supplier via e-mail, of the beginning of the approval procedure.

SERNAC will decide on the approval's application within the term of six months from the day following the notification of the supplier of its commencement (Article 27 of Law No. 19,880).

Validity of the approval of a plan

Approval of a compliance plan may be for up to 24 months, as determined by SERNAC based on the accompanied background, the scope of the plan, and the characteristics of the supplier.

To renew the term of the term, the supplier must present a new approval application before SERNAC, demonstrating the compliance of the requirements established on the Circular for the original approval and selecting the procedure by which it will be subject.

Publicity of approvals

SERNAC shall maintain available on its institutional website, a list of all approved plans, which shall contain, at least, the identification of the provider, the number and date of the act approving the plan, and the validity of the approval.

At the end of the validity of the approval of a plan, if it has not been renewed, it will be removed from the list.

Treatment of the accompanied information during the approval procedure.

SERNAC entrusts the procedure for approval of compliance plans to officials whose coordination will directly depend on the National Sub-directorate and who will be independent of the sub-directorates in charge of the protection mechanisms.

The compliance plans, given their nature, contain information on the supplier whose disclosure to third parties may affect its commercial and economic rights, assumptions recognized as grounds for secrecy or reserve in Articles 20 and 21 of Law No. 20,285 on Access to Information. To this end, the Service must adopt measures to safeguard the information that may affect the supplier's commercial or economic rights, within the respective legal framework.

At the end of the procedure, the supplier may request the destruction or return of all the information, by written communication to SERNAC.

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

Authors: Guillermo Carey; Aldo Molinari; Eduardo Reveco; Kureusa Hara