

TECHNICAL SPECIFICATION ON COMPLIANCE PLANS IN THE CONTEXT OF THE AMENDMENT TO THE NATIONAL CONSUMER SERVICE

On August 26th, 2019, the National Institute of Normalization (INN) published Technical Specification INN/ET1 on compliance plans for the protection of consumer's rights (the "Technical Specification"), in accordance to which suppliers can develop the compliance plans referred in Article 24 subparagraph four of Law No. 19,496 Consumer Protection Act ("CPA"), included therein after the latest amendment to that Law.

The new drafting of the CPA establishes the possibility for suppliers to develop and implement compliance plans that must be designed in accordance to the Technical Specification, setting forth the mechanisms for prevention of infringements to the consumer protection regulations.

Article 24 of the CPA incorporates a new system of mitigating and aggravating circumstances for contraventional liability of suppliers, that can decrease or increase the sanctions imposed against the supplier for infringements to the CPA, as determined by the judge.

In the context of mitigating circumstances set forth in said Article, the "substantial collaboration of the offender with the National Consumer Service", is included, considering "substantial collaboration" from the supplier as having a specific compliance plan for consumer protection matters.

Below is a brief summary of the most relevant aspects of the guidelines and principles provided by the Technical Specification for preventive compliance plans.

THE COMPLIANCE PLANS WILL BE AUTHORIZED BY CERTIFIERS, AFTER THAT, SERNAC MAY APPROVE THEM

In case a supplier decides to have a voluntary compliance plan on consumer protection matters, said plan will have to comply with the guidelines contained in the Technical Specification, and be submitted

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for certification before a certifying entity recognized by the authority.

Certifiers will be independent from SERNAC and will have the mission to certify the compliance plans.

Once the certification is obtained, the compliance plan may be submitted for approval of SERNAC. Only with the approval of SERNAC, and to the extent the supplier is able to prove that the plan has been implemented and subject to monitoring in practice, the judge can consider the compliance plan as the mitigating circumstance of substantial collaboration with the authority.

SCOPE AND CONTENT OF THE TECHNICAL SPECIFICATION

•Legal nature

The Technical Specification is a guideline for the design, implementation and monitoring of the compliance plans. In particular, the Technical Specification sets forth the requirements for the development and implementation of a compliance plan on consumer protection matters, regardless of the possibility for it to be integrated into general compliance plans and other previously existing guidelines of the company.

•Orienting purpose for companies

In this sense, with the purpose of designing compliance goals that are adjusted to each company's needs, the Technical Specification is a guideline, that should always have the goals and characteristics of each company in consideration. Once the consumer protection goals and risks of the organization are defined, the compliance plans must be developed considering a commitment to satisfy the requirements of the plan, a framework for its review, the scope, application and context in which it will be executed, its integration with other functions (such as legal auditing and advisory), the authority and autonomy of the compliance function, the reputational and economic consequences of its breach, within other general guidelines included in the Technical Specification.

•Documents needed to develop a compliance plan

According to the Technical Specification, when the companies develop a compliance plan, they must evidence and document the information or background used as basis for the risk evaluation, decisions and goals considered in order to develop or improve the

compliance plan. For example, this documentation can include, an ethics code, an internal regulation of the supplier, a compliance policy within the organization, goals, purposes and structure contained in the plan, the designation of roles and functions, a registration of risks, accomplishments, breaches, amongst others.

•Regarding the compliance body or officer

The execution of a compliance plan can be in charge of a compliance body and/or officer, who must oversee its operation and monitoring. In absence of such, said functions can be exercised by the high directive governing body of the company or it can be outsourced.

•Elaboration of compliance reports

Compliance reports about the plans must be elaborated. The content of these reports may include issues that the supplier must inform to the authorities; modifications to the compliance obligations; effective compliance actions; detailed indication of possible breaches; corrective measures; effectiveness of the compliance plan; relationship with regulators; and results of audit and follow up activities.

•Performance evaluation of the compliance plan

Regarding the performance evaluation of the compliance plan, the Technical Specification offers guidance on the regular evaluations of identified risks, considering its reasonability, origin, nature and analyzing its consequences, along with the adequacy and effectiveness of the control measures. Finally, it is important to consider that the Ministry of Economy will issue a regulation that will establish additional details for the compliance plans and the certification mechanisms. It is expected that the regulation will be enacted within the next months.

Base don public information made available by Sernac.

Read more:<https://www.sernac.cl/portal/604/w3-article-55843.html>

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