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NEW INTERPRETATIVE GUIDELINE ON THE SCOPE AND CONTENT OF COMPLIANCE PLANS IN REGULATIONS REGARDING THE PROTECTION OF CONSUMER RIGHTS

SERNAC issued the new version of the Interpretative Guideline on the scope and content of compliance plans in regulations regarding the protection of consumer rights. This, with the purpose that companies can develop their compliance plans, strengthening their compliance culture in Chile. Amongst the main advantages of said plans are acting as attenuation of liability for companies that have infringed the consumer protection regulations.

Hereunder, you will find a brief presentation of the content of SERNAC´s guideline dated January 31st of 2020:

1. COMPLIANCE PLANS IN THE CPA, PURPOSES AND SERNAC'S ROLE

The CPA regulates compliance plans in two articles. Regardless that both plans can have similar elements, they fulfill diverse purposes and SERNAC assumes differing roles in each one of them.

1. Preventive compliance plan of article 24 subsection 4 of the CPA: In this case, the company analyzes and evaluates its infringement risks before they have occurred, to stablish preventive, detection and corrective measures related to said risks. SERNAC recognizes in its guideline that these plans respond to the specific characteristics of each supplier and can be as extensive or delimited as the supplier determines, according to the analysis of its context.

For the design and deployment of this compliance plan it is essential to raise a matrix of the processes that details the risks that the company addresses, according to its specific characteristics.

Article 24 subsection 4 letter c) of the CPA gives SERNAC the power to "approve" these compliance plans, which are based on the risk management of a company and seek to mitigate them to ensure the observance of the obligations that aims to cover with said tool.

Thus, the approval, through the process provided by SERNAC and validated by itself, will imply that the supplier has provided "substantial collaboration" before a judicial proceeding and that, complying with the rest of the legal requirements, it will be considered as an attenuation circumstance when determining the fine to sanction the infringement.



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2. Compliance plan presented within the voluntary procedure of article 54

P of the CPA: This plan demonstrates actions of a double character (preventive and corrective) which falls under the infringing conduct that initiates the voluntary procedure and that will be evaluated according to the nature of the specific infringement in the context of the settlement reached with SERNAC.

According to article 54 P of the CPA, the supplier can “present” to SERNAC a compliance plan as part of the settlement reached in a collective voluntary procedure. Thus, attending to the nature of the infringement, the plan would be a part of the settlement and, along with it, SERNAC can assume its supervision and follow-up to determine potential breaches.

II. CONTENTS OF THE COMPLIANCE PLAN

In virtue of the minimum requirements provided in article 54 P of the CPA, SERNAC, with a broad and teleological interpretation, considers that compliance plans must contain, at least, the following main elements for the deployment of effective instruments:

1. Appointment of a compliance officer
2. Identification of corrective or preventive actions or measures
3. Deadlines for implementation
4. Protocol destined to avoid the risks of non-compliance

Regardless of these “minimum requirements” SERNAC considers that compliance plans must additionally have other elements such as:

1. A commitment of senior and middle management
2. Correct alignment of incentives and application of disciplinary measures
3. The reaction against findings, such as (i) investigation of denounces and alerts or complaints and (ii) analysis, and correction of underlying causes of the breach.
4. Continuous improvement, periodic tests and review, through activities such as (i) audits; (ii) update of the risk evaluations; or (iii) measurements.
5. Monitoring and follow-up by SERNAC

This guideline is already available on the website of SERNAC and can be viewed in the following [link](#).

Finally, it should be mentioned that the regulation that disciplines the system that will guide and complement the compliance plans, that will determine the approval process to be carried out by SERNAC and the certification system by independent third parties, is still pending in the Ministry of Economy.