

Project to strengthen the SERNAC (National Consumer Service)

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The proposed legislation designed to modify the Protection of Consumers Rights Law ("LPC" from the acronym in Spanish) is known as the "Bill to Strengthen the SERNAC" ("the Bill"). This is because its principal modifications to the present Law are focused on strengthening the SERNAC by giving it greater powers. In this new scenario, companies will have to take the necessary measures to adapt to new legal requirements in order to avoid possible infractions of the law.

The Bill has already been passed by the Lower Chamber is presently being discussed by the Upper Chamber with urgent status, and will soon be voted upon.

Here is a summary of the principal changes being proposed by the Bill:

I. NEW POWERS FOR THE SERNAC

The Bill gives new Powers to the SERNAC, including the following: i) the right to perform inspectionary control procedures on suppliers; ii) the direct imposition of fines in individual sanctioning procedures related to infractions of the LPC; and iii) the establishment of regulations or instructions of a general nature that complement the LPC.

II. INCREASED FINES AND LONGER STATUTE OF LIMITATION PERIOD

The Bill proposes a significant increase in the fines established in the LPC. Most of these fines will increase by up to six times, reaching in some cases as much as 2,250 UTM (US\$167,038).

Furthermore, the Bill increases from six months to two years the statute of limitation period for the imposing of fines. This period will start from the time that the infraction ceases.

III. PUNITIVE DAMAGES FOR THE SUSPENSION OF BASIC SERVICES

In the case of suspension, stoppage or unjustified failure to provide basic services (drinking water, gas, electricity etc.), the Bill includes the obligation of the supplier to compensate the affected consumers for each day without services, for an amount equivalent to ten times the average daily value of the service. This compensation will be paid by discounting the respective amount from the following bill sent out.

For the calculation of this compensation, it will be understood that a day is considered without supply every time that the service has not been

provided for four continuous hours or for four hours within a 24 hour period.

IV. MODIFICATIONS TO LPC PROCEDURES

1. New administrative sanctioning procedure before the SERNAC

A new procedure is created to defend individual interests to be substantiated before the SERNAC itself when the supplier has not been able to reach a prior agreement with the consumer or with the SERNAC. This procedure will be substantiated before the Regional Management, and the final resolution will be issued by the Regional Manager.

A claim of illegality may be made against the final decision before the Local Police Courts that correspond to the domicile of the consumer.

2. Collective action

The principal modifications made in collective action are as follows:

a) Compensation for non-material damage is expressly included;

b) The judge will be authorised to impose a fine for every consumer affected when the nature of the infraction so merits, with the restrictions indicated in the law and with the proviso that the compensation may never exceed the absolute global limit of 45,000 UTA (US\$ 40,089,215).

3. New voluntary procedure for protecting collective interests

A new procedure is created as a special administrative procedure within the responsibility of an independent, specialised unit of the SERNAC, corresponding to the legal enshrining of what is presently known as "collective mediation". This process may only be initiated if collective actions have not been brought in relation to the same facts.

V. LEGAL IMPEDIMENT OF DOUBLE ADMINISTRATIVE SANCTIONS

A relevant modification included in the Bill, designed to resolve the overlapping of powers between the SERNAC and other sectorial regulatory bodies, is the express prohibition to apply an additional sanction when this is based on the same facts and fundamentals or legal purposes as a sanction previously imposed by a sectorial authority. Consequently, the same offender may never receive two or more administrative sanctions for the same facts and fundamentals or legal purposes.

In conclusion, this Bill strengthens the SERNAC, giving it a much more active role in the protection of consumer rights. Therefore, companies will have to take the necessary measures to adapt to the new standards imposed by the Bill, thereby preventing possible infractions.

