

April, 2020

➤ SERNAC'S NEW INTERPRETATIVE CIRCULAR ON SAFEGUARDING THE HEALTH OF CONSUMERS AND ALTERNATIVE MEASURES FOR COMPLIANCE, SUSPENSION AND EXTINCTION OF BENEFITS, IN THE FACE OF THE CORONAVIRUS PANDEMIC (COVID-19)

On April 23, 2020, the National Consumer Service (SERNAC) published the "Interpretative Circular on Safeguarding Consumer health and alternative measures for compliance, suspension and extinction of benefits in the Face of the coronavirus pandemic (Covid-19)," by which the Service seeks to safeguard the protection of the consumer's health and to specify such protection in a set of duties and alternative compliance measures, necessary to maintain an adequate level of protection of consumer rights.

Based on the provisions of Law No. 19,496, Consumer Protection Act (CPA), SERNAC determines the main concepts and criteria handled by the Service in relation to the protection of consumer health and the forms of compliance by equivalence that suppliers may adopt as a result of the coronavirus pandemic, replicable in different regulated markets.

I. *The highest protection of consumer health*

The Service, on the basis of a systematic interpretation of the various provisions of the CPA, determines that the legislator has considered the health of consumers to be an essential element of the protective legal order. Since consumer law protects the consumer, it therefore, protects the consumer's health in his or her consumer relations.

Based on the above, the health of consumers should illuminate the way in which the obligations undertaken by suppliers are fulfilled. Therefore, compliance by equivalence of the obligations and duties arising from the contract and the CPA, is tolerated, insofar as it protects the consumers' interests through information duties and avoiding or mitigating possible damages.

II. *Alternative performance of contracts and suspension or termination of rights as an exception*

The Service considers that, in the face of the pandemic, the principle of the primacy of contracts should prevail, in the sense that legal transactions concluded between consumers and suppliers are meant to be fulfilled.

However, under consumer health protection law, it is exceptionally permitted to manipulate the compliance of duties and obligations arising for suppliers, tolerating forms of compliance by equivalence that favor of consumer rights.



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In the same way, and under exceptional circumstances, suppliers may suspend or, even more exceptionally, terminate services, reimbursing any payments made by consumers.

The Service believes that suppliers must fulfil their obligations diligently, which, in the current context, implies raising certain standards of behavioral duties, such as those of information and foresight, professionalism and mitigation.

III. *Legal duties of information and mitigation of damages arising from the protection of consumer health*

Under the right to the protection of health of consumers, the Service believes that the following duties arise for suppliers:

- 1.1.** Strengthen the means and channels available to communicate with consumers.
- 1.2.** To adopt minimum health and safety measures at the points of sale and/or service provision.
- 1.3.** Control, or at least mitigate, agglomerations both in waiting lines (inside and outside) and in the maximum number of consumers inside commercial premises.
- 1.4.** Establish protective measures to ensure that a permanent supply of goods and services is maintained for the consumers, under market conditions and without arbitrary discrimination.
It should be noted that, in the context of a health emergency, rules may be established to proportionally, adequately and gradually ration the supply of certain essential products to the public, provided that this is done in an objective, transparent manner and with a view of ensuring a permanent and equitable supply chain for consumers.
- 1.5.** To safeguard in a special way the will of consumers in the face of this exceptional event, in terms of providing fluid communication and, above all, promoting the best form of alternative contract enforcement, respecting the interests of grouped consumers.

In this regard, SERNAC will encourage the use of alternative or self-compositional methods of conflict resolution, especially those that incorporate the presence of an impartial third party, as an amiable composer.

IV. *Legal duties emanating from consumer rights, according to different types of markets*

SERNAC distinguished the different legal duties of suppliers in relation to specific regulated markets:

1.1. Public transport. It is necessary for suppliers to provide a safe service, safeguarding the right to health and integrity of passengers, particularly through vehicle sanitation protocols, training their staff to maintain hygiene and safety measures, and providing guidance to consumers.

1.2 Face-to-face services, entertainment, public shows or others. The cancellation or rescheduling of face-to-face or mass events, in the face of a health emergency, does not constitute a violation of the CPA per se, as long as consumers are informed in a timely and appropriate manner of the measures taken.

1.3. Airlines and travel agencies. The cancellation or rescheduling of flights, in the face of a health emergency, does not constitute a violation of the CPA per se, as long as consumers are informed in a timely and appropriate manner of the measures taken. It is considered essential to have the consumer's consent to modify the proposed conditions through the different communication channels, such as customer service, call center, among others.

In this sense, travel agencies are required to contact service suppliers and consumers in order to offer self-compliance solutions, without prejudice to their possible legal liability under the terms of Article 43 of the CPA.

1.4. Marketplaces. The companies dedicated to the publication of offers and marketplaces are required to adopt strict measures of information, security and revision of the respective publications, in coordination with the respective authorities.

1.5. Basic services. The CPA provides for a special regime for this type of company, which under Articles 25 and 25 A of the CPA must comply with their obligation of permanent supply, maintaining continuity of service, and must therefore guarantee their supply, under penalty of applying the corresponding compensation.

SERNAC recalls, however, that it is the duty of consumers to be responsibly informed of the measures adopted and reported by consumers, as required by Article 3(b) of the CPA.

V • *Relationship with consumers and their responsible consumption*

The Service recommends informing and promoting the use of health and hygiene measures to consumers at the entrance of the supplier's commercial establishment, in order to reduce the risk of contagion of dependents and consumers.

In the case of measures imposed by the competent health authority, consumers must be informed in advance by all available means and channels of their obligation and justification, safeguarding information and dignity while dealing with consumers.

The consumer must be responsibly informed of the measures taken by the supplier and comply with the safety measures for his protection.

This Circular is already available on SERNAC's website, and can be reviewed at the following [link](#).