

REGULATION ON THE VOLUNTARY PROCEDURE FOR THE PROTECTION OF COLLECTIVE AND DIFFUSE INTERESTS OF CONSUMERS WAS APPROVED BY THE MINISTRY OF ECONOMY

Executive Summary

On February 5th, 2021, the Ministry of Economy published the final version of the Regulation on Voluntary Procedures, which is processed before the National Consumer Service, for the protection of collective or diffuse interests of consumers.

Among its provisions, the following stand out: several key concepts, principles and terms were explicit; it defined the suppletory applicable rules; and it set forth procedural and electronic processing rules, providing more certainty for this administrative procedure.

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On February 5th, 2021, the Ministry of Economy, Development and Tourism published in the Official Gazette, a Regulation on the voluntary procedure for the protection of collective or diffuse interest of consumers (the "Regulation"). The Regulation establishes standards for the proper application of the Collective Voluntary Procedure ("PVC"), enshrined in Paragraph 4 of Title IV of Law No. 19,496 on Consumer Protection Act (the "CPA"), after the reforms introduced by Law No. 21,081 of 2018 that strengthened the attributions of the National Consumer Service ("SERNAC").

The Regulation complies with the provisions of article 54 S of the CPA, which instructs the Ministry of Economy, Development and Tourism to issue a regulation to set the required standards for the proper application of the PVC.

● *Applicable Regulations for the administrative procedure before SERNAC*

Among the main general rules contained in the Regulations are:

1. Basic principles: the Regulation establishes as PVC's basic principles:

- a. Consumer indemnity
- b. Procedural Economy or Efficiency
- c. Publicity
- d. Integrity
- e. Due Process

2. Supplementary regulations: for all matters not expressly ruled out by the Regulation, and in everything not contrary to the purposes of the PVC, Law No. 19,880 on Administrative Procedure Basis will be applicable.



If you have any questions regarding the matters discussed in this news alert, please contact the following attorneys or call your regular Carey contact.

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- 3. Deadlines and terms:** all established days shall be deemed as administrative business days (business Monday to Friday) and the term shall be counted from the following business day to the one on which the act in question was notified or published, as applicable, unless expressly provided otherwise by law.
- 4. Electronic processing system:** the procedure will be conducted by electronic means and it will be recorded in a digital file.
- 5. Notifications:** the first notification to the supplier involved and to the Consumer Association that has filed the complaint, if applicable, will be made by registered letter ("carta certificada"). For efficiency reasons, the remaining notifications may be made to the email registered by the intervening party.
- 6. Procedure Extension:** the maximum duration of the PVC will be 3 months, which may be once extended once, ex officio or at request of the supplier, for up to 3 months and by means of a founded resolution. This term does not include the judicial procedure to obtain the "erga omnes" effect for the approved agreement.
- 7. Confidential information:** The provider that requests the reservation of information must make a well-founded presentation to SERNAC, requesting the reservation of those records that contain formulas, strategies or trade secrets, which disclosure may affect its competitive performance.
- 8. Compliance plans:** the PVC favorable term resolution may contemplate the presentation by the supplier of a compliance plan. This plan must contain certain minimum elements specified by the CPA and the applicable regulation and have the approval of the Board of Directors or the supplier's management body.

II. *PVC's termination causes*

The Regulation provides that the PVC may terminate due to the following reasons:

- 1. Favorable term:** one that concludes by means of a resolution that contemplates the agreement signed between SERNAC, the provider and other parties, when applicable.
- 2. Unsuccessful term:** one that concludes by SERNAC's resolution under any of the following circumstances:
 - a.** Due to the expiration of the original or extended term, without reaching an agreement.
 - b.** In those cases that SERNAC, by justified resolution, or the provider involved (without having to justify its decision) had expressed their willingness not to persevere in the procedure.
- 3. Failed term:** one that is concluded by SERNAC's resolution under any of the following circumstances:

- a. When the supplier, having been notified of the opening of the PVC, does not respond or does not expresses its will to participate.
- b. If the provider's attorney did not correct his lack of sufficient attribution to compromise at the corresponding hearing.
- c. When, as determined by SERNAC, the provider did not comply with the delivery of the required information for the fulfillment of the purposes of the PVC.

III. *Scopes made by the Comptroller General of Chile*

The Comptroller General of Chile implemented the Decree scoping as follows:

1. In no case may the provisions of the Regulation shall imply the non-application of Law No. 19,880, as its standards shall apply above those of regulatory rank, and;
2. The provisions on electronic processing system contained in the Regulation are without prejudice to the entry into force, in due course, of the amendments incorporated by Law No. 21,180, on Digital Transformation of the State.

IV. *Applicability*

This Regulation will entry into force immediately. However, the Regulation provides that if there is no electronic processing system to substantiate the PVC, this must be done by written and physical means, until the electronic processing system is duly implemented.