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CONSUMER PROTECTION

EXECUTIVE SUMMARY

The following article presents an overview of the Chilean Consumer Protection Law. It covers the generalities of the legislation, its application, and the legal definitions of consumers, suppliers and acts of consumption, including the rights and obligations in their relationship. It also covers advertising rules that suppliers must follow when they promote their products and services, and all the necessary and relevant information that must be provided to the public when facing a purchase decision. It includes a brief review of the private and public entities that have responsibility in consumer protection, as well as the procedures and sanctions in case of a breach of the law. Finally, the article recognizes the increasing public awareness of this issue and presents a brief review of the main changes of the law over the past few years to protect the consumers in general, but also what has changed for financial services.

INTRODUCTION

The Chilean government and institutions have shown a growing interest in the protection of consumers as a fundamental part of the economy. Consumers are considered to have a right to protection, information, and security in their commercial activities. Legislation recognises the essential rights of consumers and the obligations of suppliers. It establishes procedures in the case of non-compliance and covers crucial aspects that arise naturally from the relationship between consumers and suppliers.

The Consumer Protection Statutory Law Number 19,496 (the `Law´) aims to regulate relationships between suppliers and consumers. It recognises rights and obligations for both, establishing fines for the infringement of consumers' rights and regulating the procedure applicable for resolving differences. The Law also regulates compensation for damages and establishes the penalties and fines that the relevant authorities may impose in case of infringement by a supplier.

The law also specifies which acts are subject to its regulations, focusing on "acts of consumption." These are defined as legal acts that, under the Chilean Commercial Code, are considered commercial for the supplier and civil for the consumer.

Additionally, some legal acts that are not typically commercial for the supplier are still regarded as acts of consumption under the law, extending its coverage to ensure broader consumer protection. These include:

- Marketing of tombs or graves.
- Seasonal rental agreements, where the supplier provides the consumer with use or enjoyment of furnished property for continuous or discontinuous periods not exceeding three months, for rest or tourism purposes.
- Some aspects of private education contracts at the elementary, secondary, and tertiary levels.
- Certain aspects of housing sale contracts by construction companies, real estate companies, or the Housing and Urbanization Service[1].
- Healthcare services, excluding health benefits and financing matters related to health funds or insurance, or any other issues regulated by special laws.

1 The Housing and Urbanization Service is a public agency in charge of public housing and urban works in their geographic area of competence.

Notwithstanding the above, the Law is not applicable if there are activities regulated by other specific laws. However, as a counter exception, the Law may apply: (i) In cases in which the collective or diffuse interest of consumers is compromised, as defined by the Law; and (ii) With regard to the individual compensation right of a consumer, when there is no specific procedure in the special law.

The Consumer Protection Law has been modified several times to address the evolving needs of consumers, the complexity of modern services, and to reduce the information gap between suppliers and consumers. One significant change came with Law No. 20,555, which empowered the National Consumer Service (SERNAC) to oversee financial services and monitor standard-form contracts. Further modifications aimed at strengthening consumer rights include:

1. Law No. 21,081, which granted SERNAC powers of inspection and the authority to interpret the law.

1. Law No. 21,398, known as the "Pro Consumer Law", introduced the pro-consumer principle, ensuring that all provisions in the law are interpreted in favour of consumers.

CONSUMERS

The purpose of the Consumer Protection Law is to create a legal framework that governs the relationship between consumers and suppliers, establishing rights for consumers while also imposing a few obligations on them to balance the responsibilities of suppliers. The law defines a consumer as "a natural person or legal entity who, through any legal onerous act, acquires, uses, or enjoys goods or services as the final recipient." Importantly, the law specifies that suppliers—entities providing goods or services—can never be classified as consumers, ensuring a clear distinction between the two roles in commercial transactions.

The basic rights and duties of consumers include:

1. Right to free choice of goods and services. Silence is never considered acceptance in acts of consumption.
2. Right to timely and truthful information about the goods and services offered.
3. Right not to be arbitrarily discriminated against by suppliers.
4. Right to safety in consuming goods and services, including protection of health and the environment, with the duty to avoid risks that could harm them.

5. Right to reparation and compensation for supplier breaches, coupled with the duty to act according to the law.

6. Right to education for responsible consumption and the duty to engage in transactions with established traders.

The law also grants consumers the right to unilaterally terminate contracts for goods or services within ten days of receiving the product or contracting the service (before its provision), under the following conditions:

1. Purchases made in meetings organized by the supplier where the consumer is required to accept on the same day (e.g., timeshare contracts).

2. Contracts accepted via electronic means or through catalogues or any form of remote communication, unless the supplier expressly states otherwise. Additionally, the ten-day period may extend to ninety days if the supplier fails to send written confirmation of the contract's execution when providing the service.

Regarding tertiary educational services provided by professional institutes, universities and technical training centres, consumers have the same above-mentioned rights, but the term of ten days applies from the publication of the official admission results.

The Law also recognizes the special conditions and circumstances faced by consumers in the complex credit and finance industries, where there is a notable information gap. There are special rights and provisions to protect consumers, including:

- To receive information on the total cost of the product or service, including the annual charge.
- To know in advance the commercial and financial conditions established by the provider.
- To receive the timely release of the guarantees constituted to ensure the fulfilment of obligations.
- To choose the appraiser of assets offered as a guarantee, selecting from the alternatives provided by the financial institution. To know the total amount of the debt considered in the agreement.

Finally, it is important to note that all the rights established in Chilean Consumer Protection Law are inalienable in advance for the consumer, and all provisions to the contrary are considered void.

SUPPLIERS

The Law defines suppliers as the "Natural person or legal entity, whether public or private, who produces, manufactures, imports, constructs, distributes or commercialises goods or services to or for consumers, for which a price or tariff is charged". Professionals that exercise independent activities are generally not considered suppliers, e.g. lawyers, architects, doctors, accountants and others, although novel government resolutions have ruled otherwise.

In general, in any commercial relationship between consumers and suppliers, the latter has at least the following duties and obligations:

1. They must comply with the terms, conditions and modalities that have been offered to the consumer.
2. They are required to send written confirmation after a consumer accepts a contract made through electronic means, catalogues, or any form of distant communication. The consumer's consent is valid only if they are provided with clear, understandable, and unambiguous access to the contract's general conditions and can print or store the contract for future reference.
3. They may not unjustifiably deny the sale of goods or provision of services they publicly offer, under the conditions offered.
4. They must inform consumers when products are used, refurbished or faulty, as well as if used parts were used in their manufacture. It is sufficient to indicate this on the products' wrapping.
5. The security monitoring systems of commercial establishments and stores must respect people's dignity.

Notwithstanding the above-mentioned responsibilities, special rules are applied to suppliers when the commercial relationship is entered into through standard-form contracts, normally implying that the contract cannot include certain provisions deemed abusive by the Law. Standard-form contracts are those whose clauses have been unilaterally imposed by the supplier, without the consumer being able to alter them. Furthermore, they must be clearly legible, with a font size of not less than 2.5 millimetres and written in Spanish.

The Law prohibits the following clauses and provisions:

1. Those that grant the unilateral power to cancel, modify or suspend the contract, except where it is granted to the buyer in case of sales by mail, catalogues or other audio-visual mediums.
2. Those that establish price increases for services, accessories, financing or surcharges, unless such increases can be

accepted or rejected by the consumer on a case-by-case basis.

3. Those that charge the consumer for the effects of deficiencies, omissions or administrative errors, when they are not attributable to them.
4. Those that invert the burden of proof to the detriment of the consumer.
5. Those that contain absolute limitations that deprive the consumer of his or her right to redress against deficiencies that affect the usage or the essential purpose of the product or service.
6. Those that include blank spaces, which have not been completed or which have been disabled before signing the contract.
7. Those that go against good faith in contracts, causing a significant imbalance between consumers' rights and obligations.
8. Those that limit how consumers can exercise their rights.

All the above-mentioned clauses are considered void if included in a standard-form contract. Annulment of one or more of the clauses will not affect others, which remain in force, unless this is not possible considering the nature of the contract or the intention of the parties. In all the above cases, a judge must declare the nullity of the clause.

Under the Pro Consumer Law, any ambiguous terms in standard-form contracts must be interpreted in favour of the consumer. Additionally, if there are contradictory terms, the one that is more favourable to the consumer will take precedence.

ADVERTISING RULES

The Law establishes mandatory rules regarding the information that must be provided by the supplier, so that the consumer gets all the relevant facts necessary to make an informed decision when buying a product or hiring a service. In addition, it regulates how suppliers can advertise their products or services. These mandatory rules apply not only to advertising campaigns, promotions, offers or contests, but also to product labels and conditions for services offered.

A supplier may infringe the Law when an advertisement or label contains misleading information about:

1. The components of products and the overall composition percentage.
2. The suitability of the goods or service for the purpose they aim to fulfil.
3. Relevant features of the goods or service.
4. The price of the goods or service, its form of payment and/or the cost of credit.
5. Guarantee conditions.
6. Conditions regarding personal damage or environment damage, and recyclable or reusable features.

Any advertising messages that produce confusion regarding the identity of companies, activities, names, trademarks or other distinctive signs are also considered an infraction.

In the case of infringement of these rules, consumers are entitled to compensation. The consumer may choose between free repair of the goods, a replacement, or a refund of the amount paid (usually known as the 3x3 guarantee), in the following cases:

1. Products subject to mandatory safety or quality standards that do not comply with these.
2. When materials, parts, elements, ingredients or substances of the products do not correspond to the ones indicated in the label.
3. When the product, due to manufacturing deficiencies, quality faults or sanitary conditions, is not suitable for the proposed use or consumption, or to that indicated by the supplier in advertisements.
4. When supplier and consumer agree that the product must meet certain specifications or conditions, and this does not happen.
5. When, in use of the product guarantee, the product is returned unrepaired from the technical service centre.
6. When the product has defects, visible or hidden, that impede its ordinary use.

7. When ore grades in jewellery products are lower than that which is indicated.

The period given to the consumer for exercising the choice or restitution is six months from the receipt of the product. In cases where the product is sold with a guarantee longer than six months, the longer term will prevail.

The Law considers it a special case when the quantity or net content of the product is less than that indicated on the package. In this case, the consumer may choose between a) the replacement of the product; b) a credit voucher for the purchase of another product; and c) the refund of the price paid in excess.

MAIN ENTITIES

The Consumer Protection Law designates two key entities responsible for enforcing the institutional framework for consumer protection, as well as promoting consumer education and service standards:

National Consumer Service (Servicio Nacional del Consumidor or `SERNAC´)

The National Consumer Service has an important mediating role between consumers and suppliers. It is the public agency in charge of the supervision and enforcement of the Law and the rules governing the relationship between consumers and suppliers, but it has no jurisdictional or enforcement authority. It is also responsible for the promotion of consumers' rights and duties, and for the education of the population in these matters.

Its main functions are to:

- Oversee the compliance with the provisions of the Law and all regulations protecting consumer rights.
- Interpret the regulations protecting consumer rights that fall within their administrative remit.
- Propose to the President of the Republic, with justification, the promulgation, modification or derogation of legal precepts to adequately protect consumer rights.
- Summon the legal representatives, administrators, advisors, and employees of the entities under their supervision to testify.
- Provide information and answer inquiries for the organizations related to the protection of consumer rights.
- Carry out the voluntary procedure for the protection of the collective or diffuse interest of consumers.
- Develop, implement and promote consumer information and education.

- Carry out selective analyses of products offered in the market in relation to their composition, net content and other characteristics.
- Collect, elaborate, process, disseminate and publish information to facilitate better knowledge among consumers of the characteristics of goods and services offered in the market.
- Conduct and promote research in consumption.
- Keep a record of judgments on consumer protection issued by Local Police Courts.
- Receive complaints from consumers who believe that their rights have been infringed and to inform the supplier of this situation so that they can voluntarily propose alternative solutions that they deem appropriate.
- Ensure compliance with legal and regulatory provisions related to the protection of the rights of consumers and become part of those cases that compromise the general interests of consumers.

To ensure compliance with legal and regulatory provisions, SERNAC has the authority to denounce potential non-compliance to the relevant judicial bodies or entities. Additionally, it can become a party in legal cases where the public interest is at stake, allowing it to actively participate in protecting consumer rights in broader, high-impact situations.

Consumer Associations

According to the law, Consumer Associations play a key role in defending consumers' rights, promoting their education, and providing necessary information: and representing both their members and other consumers in legal or regulatory matters.

These organizations are independent and must remain free from any economic, commercial, or political influence. Their primary role is to defend both collective interests and diffuse interests:

1. Collective interest: Consumer Associations defend the common rights of a specific or determinable group of consumers linked by a contract with a provider.
2. Diffuse interest: They represent an indeterminate set of consumers whose rights have been affected, acting in broader cases where the violation impacts a large, undefined group.

Their main roles are:

- To propagate knowledge of the provisions of the Law.
- To inform, guide and educate consumers.
- To study and propose measures aimed to protect consumers' rights.
- To represent its members and exercise the actions of the Law in defence of consumers.
- To represent the individual, diffuse and collective interest of consumers.
- To participate in the determination of the rates for basic home services.

Consumer Associations may not engage in profitable or business activities, receive aid or subsidies from companies that provide services to consumers, advertise goods or services, or engage in activities other than those indicated in the Law.

PROCEDURES

Failure to comply with the Consumer Protection Law can result in legal actions initiated by consumers, which may seek to:

- Sanction the infringement of the law.
- Nullify unfair clauses in standard-form contracts.
- Enforce the fulfilment of breached obligations.
- Obtain compensation for damages or appropriate reparations.

The exercise of legal actions under the Consumer Protection Law can be classified into three categories:

1. Individual interest: Actions taken to defend the rights of a specific consumer.
2. Collective interest: Actions defending the common rights of a specific or determinable group of consumers connected to a provider through a contract.
3. Diffuse interest: Actions defending an indeterminate set of consumers whose rights have been broadly affected.

The common rules for the three procedures are:

- Procedures may be initiated by the appropriate lawsuit and must be submitted in writing.
- If the defendant is an individual, notification must be made to the legal representative or to the head of the store

where the product was purchased or the service rendered.

- Cases whose amount does not exceed 10 Monthly Tax Units (Unidad Tributaria Mensual or `UTM´) are processed as a single-instance process, whereby judges' decisions are final and cannot be appealed.
- All evidence must be analysed under the rules of sound judgment (`sana crítica´).

For individual interest, the main rules are that:

1. The competent court for filing consumer protection actions is the Local Police Court (Juzgado de Policía Local) in either the municipality where the consumer resides or where the supplier is located, according to the consumer's choice. Contractual agreements that attempt to extend jurisdiction beyond these options are not admissible, ensuring that consumers have flexibility and protection in selecting the court.
2. It does not require the sponsorship of a qualified attorney.

For collective or diffuse interest of consumer actions, the Law requires the following:

- The procedure can be only initiated by a claim submitted by the National Consumer Service, a Consumer Association or a consumer group whose number cannot be less than fifty people.
- Notwithstanding the general requirements, claims for damages should indicate the damage suffered and request an equal compensation for all consumers in the same situation, which will be determined by the judge.
- Once the trial has been initiated, any other consumer that is considered affected can subsequently take part in the trial.
- National Consumer Service or Consumer Associations do not require the formal representation of specific consumers in whose interest they act.
- The claimant who is party to a collective or diffuse procedure may not, while the trial is pending, file a claim of individual interest based on the same facts or circumstances.
- The filing of the claim will have the effect of interrupting the statutory limitation period for compensatory actions.

FINES

Suppliers who violate the Consumer Protection Law may face fines imposed by the competent court. These fines are intended for tax benefit and do not compensate the affected consumers directly. The law does not provide a single comprehensive list of fines, but various penalties are mentioned throughout its text. The general rule is that violations can result in fines of up to 300 UTMs unless a specific sanction is outlined for a particular violation.

The Law also considers the following fines and sanctions for:

- The organisers of public shows that offer a higher number of tickets than those allowed at the respective premises, can be sanctioned with a fine up to 2.250 UTM´s. The same penalty can be applied for passenger transport overcapacity, except for air transport.
- False or misleading advertising of products or services can be subject to a fine up to 750 UTM´s. If the breach is related to features that affect the health or safety of the population or the environment, the fine may increase to up to 1,500 UTM´s.
- The suspension without justification of a service that charges an upfront fee for connection (e.g. internet, gas, etc.), the fine may be up to 750 UTM´s. In the case of drinking water, gas, sewerage, electricity, telephone or rubbish collection services, the fine rises to 1,500 UTM´s.
- Failure to include instructions, warnings and safety instructions regarding products that are dangerous to health can be sanctioned with a fine up to 2,250 UTM´s.
- When a Judge declares the action as reckless in a judicial process, he may impose fines that can reach 300 UTM´s.

Legal actions against the supplier have a statutory limitation period of 2 years from the time of the infringement. This period will be suspended when the consumer files a complaint before the supplier's customer service, a mediator, or the SERNAC.

FINANCIAL SERVICES

The Consumer Protection Law has undergone several modifications, with one of the most significant occurring in 2012 through Law No. 20,555. This law expanded the powers of SERNAC to cover financial services. It introduced new conditions, obligations, and terms related to credit services, insurance, and financial services in general. It also assigned SERNAC a more active role in prevention, education, and information for consumers.

The law introduced new requirements for standard-form contracts in financial services, specifying that they must include at least the following provisions:

- Breakdown of all commissions, costs, and fees to explain the effective value of the services provided.
- Details of the causes for early contract termination by the supplier, how the termination will be communicated to the consumer, and the reasonable time frame for it to take effect.
- Contract length, including whether it is indefinite or automatically renewable.
- If multiple services or products are contracted, an appendix which must clearly indicate which services/products are contracted, distinguishing between those required by law and those that are optional.
- For suppliers offering customer service, the requirements and procedures for contacting or using the service.
- Indication of whether the contract has the National Consumer Service Seal (Sello SERNAC) or not.
- The existence of any mandates under the contract, along with the conditions and purposes of those mandates.

NATIONAL CONSUMER SERVICE SEAL (Sello SERNAC)

In additional to the new requirements indicated above, the 2012 modification grants the power to grant the National Consumer Service Seal to financial suppliers that fulfil the legal requirements. The purpose of the seal is to provide a guarantee to the consumer that any standard-form contract with the seal satisfies all legal requirements. However, after a decade since its implementation, it has seen very little use by companies.

The seal will be awarded by the National Consumer Services at the supplier's request, giving proof that the supplier and all its standard-form contracts satisfy the following conditions:

1. That the contract complies with the Law.
2. That the supplier provides customer service.
3. That the supplier allows the consumer to resort to a mediator or financial arbitrator to solve disputes, complaints or claims.

SERNAC has 60 days from the reception of the contract or contracts to announce its decision. If the Service does not announce its decision within the legal term, the contracts will be granted the seal by virtue of the law.

Another significant change in this area is the Pro Consumer Law that was enacted in 2021. It introduced a new requirement for financial service providers, mandating that they assess a consumer's financial solvency before offering a service. This is to ensure that the consumer can fulfil the obligations resulting from the transaction. Furthermore, they are required to inform the consumer of the outcome of this assessment and give information on the specific service in question.

LATEST AMENDMENTS OF LAW 19,496

Since 2017, two amendments have been made to the Law with the aim of further protecting consumers in different aspects, as emphasized throughout this article.

Law 21,081, which came into effect in 2018, which:

- Increased fines in case of contraventions of the Law.
- Specified mitigating circumstances to be considered by Courts, such as self-reporting, or substantial collaboration with SERNAC.
- Established aggravating circumstances, such as having been previously sanctioned for the same infringement within the last 24 months since the execution of the sentence; having caused serious financial damage to the consumer; having damaged their physical or psychic integrity; and having endangered their safety or that of the community.

Law Number 21,398 of 2021, also known as the "Pro Consumer Law", which:

- Expressly declares that it will always be interpreted in favor of consumers, in accordance with the pro-consumer principle.
- Incorporates the right to go before the competent court as a basic right of the consumer of financial products or services.
- States that providers of products and services must provide adhesion contracts to the competent supervisory body.
- Updates the rule affirming the consumer's inalienable right to choose, at their discretion, among the following options in the case of a defective product: free repair of the good; replacement of the good upon its return; or refund of the amount paid without prejudice to compensation for the damages caused. This right must be communicated by the provider of the product or service in each of its locations, stores, web pages, or others.