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Executive Summary. Consumer or End-User Protection Bill

The House of Representatives unanimously approved on second lecture the Consumer Protection Bill this past February 15. This bill is currently with the Senate, pending its lecture. During this special edition of AR we will summarize relevant aspects of said proposal.

Basic fundamentals and dispositions. (Preamble and Chapter I).

Introductory considerations for this bill, based its approval in: **a)** effective protection of constitutional prerogatives; **b)** promotion of free competition allowing fair pricing; **c)** creation of the special rights of the consumer; as well as **d)** achieving WTO objectives, approved by Resolution 2-95 by National Congress *"relationship among countries in the commercial and economical sphere tend to increase level of life, accomplishes full employment and a considerable volume and ongoing increase of actual incomes and demand and increase production and commerce of goods and services."*

The proposed bill has an *imperative* character and is declared as of *social interest*. It field includes the defense of the rights of consumers, guaranteeing *equity* and *judicial security* in relations between providers and consumers, either public or private right, national or international.

In the case of ambiguity of the legal dispositions, it should be interpreted with the most benefits for the consumer.

Institutional organisms and its faculties. (Chapters II and III)

In substitution of the General Directorate of Price Control it is created the **National Institute of Consumer rights Protection (*Pro Consumidor – in Spanish*)**. This Institute will act as a state entity that is decentralized and with performing, judicial, and financial autonomy as well as judiciary entity. *Pro Consumidor*. *Pro Consumidor* is represented by a Directorate Council and the Executive Direction answers to this Council.

The members of Directorate Council are: **a)** Minister of Industry and Commerce as the president; **b)** A representative of the Ministry of Environment and Natural Resources; **c)** *Pro Consumidor* Executive Director, secretary, will have voice but no vote during Council Sessions; **d)** A representative of the health sector; **e)** A representative of merchandises manufacturers companies; **f)** A representative of services providing companies; and **g)** Two representatives of consumer rights defense organizations.

The last four members are selected by the Executive Power from a group of candidates submitted by business and consumers associations consensus.

Among the faculties reserved for the Directorate Council are regulatory, coordinator, among this and other private and public organizations related to consumer protection, appeals to decisions of the Executive Direction hierarchical appealed, as well as the **prior approving exam, necessary according to the draft law, for the approval of any policy, method or proceedings, from any state departments, with the purpose of**

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defending the rights of the consumers. Violation of this requirement will invalidate any measure.

On the other had, the **Executive Direction** of *Pro Consumidor* will be handled by the Executive Director, appointed by decree by the Executive Power, as well as a Technical Deputy Director and an Administrative Deputy Director, both appointed by the Directorate Council. They will be responsible of organization, direction, coordination and observers of plans and programs adopted in the country related to consumer protection. Likewise, the Executive Direction of *Pro Consumidor* has the faculty to represent on behalf of consumer population rights in front of all authorities and public/private organism, through actions, resources, transactions or required negotiations.

This will be the initiating organism that will initiate any administrative resource for the execution of this law; for this purpose it will develop determined services of inspections and vigilance of the public/private entities described in the law, including the right to request information and relevant data and make inspection and supervisory visits.

Consumer Rights Protected. (Chapters IV to VI)

Basic rights of the consumer or user are:

a) Protection of life, health and physical safety in the consumption or use of goods and services. (Chapter V). Among the dispositions of this chapter it is important to emphasize those related to indications of risks of use and handling products; dispositions of withdrawal or suspension of products for unforeseen risks; prohibit

import of products that do not accomplish with the expiration term and sanctions for altering the dates.

b) Protection of the economic interests. (Chapter VI). A group of special dispositions created to protect the user, establish measures and remedies for equal and non-discriminatory or abusive treatment by goods and services providers. Among them, the text establishes requirements of veracity of the publisher, exact weight and measures, guidelines relevant to credit operations, special offers, indirect and home sales, assent contract or forms, clause and abusive practices in assent contract.

c) Education for consume and use of goods and services. (Chapter VII). The protection regime in this chapter includes among other aspects, regulations related to the minimum amount of information contained in the labels, signs or analogue support, price information, publicity and sales promotion.

d) Right for representation and association. (Chapter VIII). Regulates the creation of consumer association and the right of individual or group representation to defend the interests at *Pro Consumidor*.

Obligations and Responsibilities of the Providers. (Chapter IX).

Goods and services providers are responsible of: **a)** Equalize legal interests and economic development and technology needs, with Defense and Protection of the Consumer; **b)** Serve under honest commercial uses with equity and discrimination in relation to consumers and users; **c)** Meet with all sanity, labeling, packing, safety and quality norms established for the products and services

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offered; **d)** Make sure that all conditions for carrying out their activities are compatible and environmentally sound, safety and consistent to the products and services provided in the market; **e)** Respect and meet specifications, conditions and terms offered and agreed by the consumer; **f)** Be informed of the nature, utility, quality, and known risks of products and services offered and provide this information to the consumer in a clear, concise, and precise manner; **g)** Issue and give the consumer or user a document or invoice with letterhead, numbered, dated, and signed as a proof of product or service provided/delivered specifying quantity, specifications, values and taxes according to the law.

Civil and Penal Responsibilities and Sanctions. (Chapter X)

Products and services providers, due to their activities, may incur in civil and criminal liabilities. **There is a joint liability for all members in the chain of production, for the payment of damages from injuries or loss of technologies, good or services provides including for wrong or inadequate instructions.** The repair should be adequate, sufficient and timely.

Repairs for damages include, in a concurrent or separate way, complete replacement of product or service, free repair of damages from the main repair, reduced price, replacement of values-costs incurred for damages from the consumption or use of product or service, and complete refund.

Civil responsibility reaches the guilty party of violations or crimes, according to the established by law, the Criminal Code and other special laws.

Violations in consuming matters will be subject to corresponding sanctions, prior instructions from the file without prejudice of civil, criminal or other responsibilities that may incur. It is considered violations in consumers and users defense matters among other the following: **a)** those related to alteration, tampering, falsification or fraud; **b)** health and safety for example, actions or omission to actions the result in risks or damages to the health; **c)** related to commercial transactions, sales conditions and price techniques, such as hiding the price from the consumer, monopolizing or hoarding raw materials or products; **d)** related to normalization, documentation and conditions to sales or supplies, such as coercion, intimidation or any other form of pressure on the consumer; and **e)** others such as denial to investigation or inspection in the execution of matters of draft law.

There are several categories of violations such as minor, serious and very serious, depending on the presence or not of certain conditions established in the text.

For example, minor violations will be simple irregularities. Serious violations will be social alterations or as a consequence of direct or indirect benefits of the violation. Very Serious violations will be concurrent sanitary violations or creating a shortage situation in a market sector or zone due to the violation.

Sanctioning regime includes administrative sanctions. Minor violations will receive warning or fine up to 20 minimum salary; serious violations will be fined with up to one hundred minimum salaries or more until reaching five times more than the value of the products or services violated, and very serious violations



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will be fined with one hundred minimum salary reaching up to five hundred minimum salary, until five times the value of the products or services object of violation.

Besides the sanctions detailed in the draft law, courts will impose the infringer the obligation of refunding the claimer the amount wrongly received, in the cases of pricing over the authorized, published, budgeted or advertised to the public. Courts will be imposing coercive fines destined to the execution of the verdict enforcing the law and other dispositions relevant to consumer defense.

Administrative Proceedings, Settlement, and Judicial Actions.
(Chapters XI, XII, and XIII).

Finally the administrative proceeding that is regulated before *Pro Consumidor*, including exhaustion of conciliatory preliminaries, regulated by the principles of *universality, freedom, and incompatibility*. In relation to judicial action, judges of peace are in the capacity to know the violations of the current law. The civil action to repair damages can be requested to **public action in criminal courts** or separately at the **civil court**. All actions prescribe in two years.

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