CONSUMER AFFAIRS & PRODUCT LIABILITY

CLIENT ALERT

JUNE/2019

LAW N° 17,109/2019, THAT INSTITUTES THE MUNICIPAL CONSUMER DEFENSE CODE IN SÃO PAULO, IS PUBLISHED IN THE OFFICIAL JOURNAL

The new Municipal Consumer Defense Code of São Paulo establishes norms for the protection and defense of consumers "within the local interest of the City of São Paulo" (article 1). The Municipal Law imposes new obligations to consumers, beyond those established in the Consumer Defense Code (Law n° 8,078/1990, which is applied nationally and remains in force).

The new Code defines as practices that are now considered abusive in São Paulo (article 3):

(i) not offering customer service directly to consumers in the city,
(ii) charging for minimum or mandatory consumption in bars, restaurants and clubs,
(iii) advertisement that does not inform about delivery time for goods,
(iv) charging from the consumer the costs for emission of bank bills,
(v) establishing a quantitative limit for products being sold on sale, amongst others.

Amongst contractual clauses that are now considered abusive in São Paulo (article 4), the Code includes clauses:

(i) in insurance agreements, that provide for consumers to receive less than what is agreed in the policy,
(ii) in the so-called "adhesion contract" (or *contrato de adesão*), clauses that demand that consumers express themselves in regards to the transfer of data obtained by the supplier in violation to the new General Data Protection Law in Brazil, amongst others.

Another point of attention are the changes to administrative proceedings that investigate violations to consumer rights. The bill of law that was in discussion provided a whole chapter dedicated to formulas to calculate the fines applied in administrative proceedings. The version that was sanctioned by the mayor, however, excluded the formulas, prevailing the limits established in the Decree n° 2,181/1997, which were already being applied.

PRACTICE AREA
Dispute Resolution
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For further information, please send a message to news@veirano.com.br

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Another change is that suppliers can now be charged for fees for the registration of complaints that are deemed "reasonable" by the Coordination of Consumer Defense – Procon. In order to characterize a "reasonable complaint", that can even be inscribed in the registry of suppliers mentioned in article 44 of the Consumer Defense Code (Law n° 8,078/1990), the consumer's allegations must be deemed reasonable and there must be causation between the narrated facts and the damage or risk of damage to consumer's rights, regardless of whether there is proof that the damage effectively occurred – which contradicts what is provided in Decree n° 2,181/1997, which is applied nationally and remains in force.

The constitutionality of the new Law may be questioned, but the Code is already in force since the day it was published (6/5/2019).

Veirano's Consumer Affairs team is available to clarify any issues or assist in this subject.

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