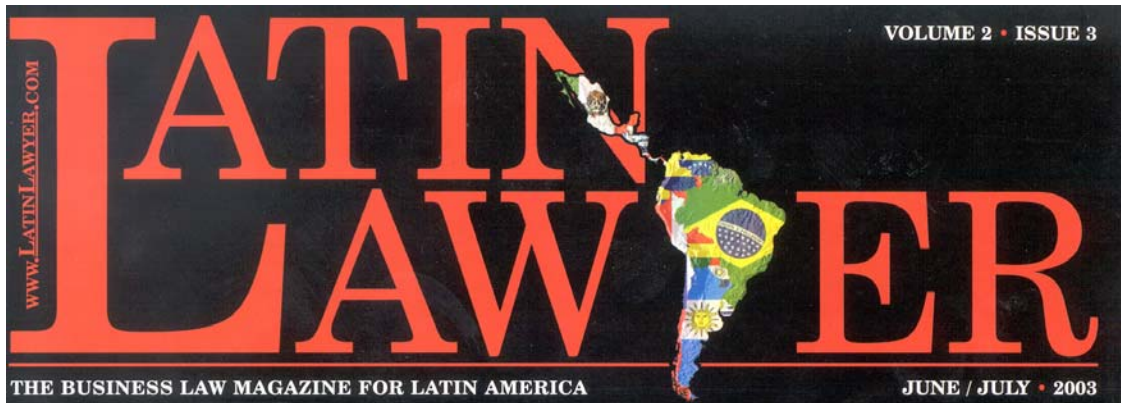


As Appeared in



Consumers' rights in Argentina - Important new regulation affecting corporations

A new regulation recently approved has established a list of abusive practices that automatically will be considered null and void

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On April 22, 2003 the Secretariat of Competition, Deregulation and Consumers ("The Secretariat") issued resolution N° 53/03, setting forth specific provisions that are prohibited in consumers' contracts. Said Resolution not only establishes the nullity of future provisions inconsistent with the Resolution, but also sets forth that provisions in violation of the Law included in an existing contract shall be expunged and such exclusion shall also be notified to the consumer. The purpose of the resolution was to establish objective parameters for the parties to learn in advance which contractual provisions would be considered void.

Consumers' rights were already protected in Argentina. In effect, in October 1993, Law N° 24240 (the "Law") was enacted setting forth for the very first time in Argentina the obligations, rights and liabilities of the parties in a consumer relationship. The Law was an improvement because as of such date only general civil and commercial rules were applicable to these kinds of relationships or agreements.

Among other provisions Section 37 of the Law states that those contractual provisions that distort the duties of the parties, limit the liability for damages or restrict the rights of consumers shall be considered null and void. Therefore in the case of any claim or judicial action brought by any consumer against a company, the competent authority -The Secretariat- or the competent judge has to analyze each particular provision in order to determine whether it violates the general prohibition of the Law or not. The interpretation of the provisions was subject to discretion of the authorities or the courts according to the circumstance of the case. With the new resolution if a provision falls within the description established in its text, it shall automatically be considered null and void.

Without prejudice to other practices that could be considered in violation of the general principles established by section 37 of the Law the following are contractual provisions considered prohibited by the Secretariat through the new resolution:

- those that grant the supplier of goods or services the exclusive right to construe the meaning, extension and compliance of a provision.
- those that grant the supplier of goods or services the right to unilaterally amend any provision of a contract unless (i) the balance between the rights and obligations of the parties in the contractual relationship is not broken by means of such amendments and (ii) said right to amend and its parameters is expressly agreed upon in the contract. Likewise,

the right of the consumer to terminate the contract as a result of such amendment must have been previously established.

- those that, notwithstanding the duly compliance by the consumer of all its obligations undertaken in the contract, authorize the supplier of goods or services to terminate the contract without cause. The termination of the agreement without cause by the supplier shall only be legal if (i) an obligation of prior notification to the consumer is provided in the contract and (ii) in the case of fixed-term contracts the right of the consumer to terminate the agreement has also been previously agreed.
- those that establish the commencement of the contract to the sole discretion of the supplier of goods or services, while the acceptance of the consumers to the terms and conditions of the contract has been irrevocable established in the text of the contract.
- those that impose limitations to the consumers judicial rights, specially in the following cases: (i) establish a different venue than the one corresponding to the domicile of the consumer at the time of the execution of the contract, except in those cases where the judicial claim is filed at the venue of the real domicile of the consumer at the time of the filing; (ii) establish limitations to the production of evidence, or impose the production of specific evidence over the consumer disregarding the provisions of the Procedural Code in this respect; and (iii) establish certain limitations to the filing of defenses and remedies.
- those that establish the right of the supplier of goods or services to set-off a credit against a consumer already in arrears with another credit of the consumer against the provider originated in another contract or service rendered by the consumer to the provider, unless said compensation is admitted by the applicable law, and the provider duly notify the consumer of this circumstance in the contract.
- those that exclude or limit the responsibility of the supplier of goods or services in case of damages caused by the product or service provided to the consumer regarding any indemnification admitted by the applicable law.
- those that establish as a condition to the right of termination of the contract by the consumer the prior payment (by the consumer) of all the pending obligations in favor of the other party, in those contracts with no term of termination or those with a specific term but with the right of the parties to terminate the contract before said term is met.
- those that establish the right of the provider to provide a different product or service than those agreed on in the contract without the prior consent of the consumer and/or impose a term for the consumer to accept such different product or service.
- those that impose to the consumer a representative in order to exercise the rights provided in the contract or to carry on any other legal act on his behalf.
- those that violate the environmental regulations, or allow said violation.

Some provisions of the new resolution are considered positive while others are considered unfair. A positive aspect brought by the resolution consists in granting more certainty to companies and consumers at the time of entering into a consumption agreement. The provisions of the new resolution apply nationwide. Therefore, it is likely that the judicial decisions of the different jurisdictions of Argentina (a federalist country with a vast territory) in what relates to the validity of certain provisions of consumption agreement will be consistent from now on.

Perhaps, the most important issue to criticize in the resolution is the compulsory application of these new rules to the contracts already in force. In fact there are many existing agreements which must be modified in the following days without the possibility for companies to terminate them. Another problematic issue the suppliers of goods and services will face is related to the diversity of places from which they would now receive claims, since the resolution obliges the suppliers to accept the jurisdiction set by the consumer's domicile, no matter where in the country the latter is established.