



Martín Caselli
Alfaro—Abogados

Further restrictions on consumer contracts

On August 14, 2003 the Under Secretariat for Consumer Protection issued Resolution 26/03, which partly modifies a former regulation (Resolution 53/03 of the former Secretariat for Competition, Deregulation and Consumers) issued under the previous government, making it more restrictive. Under Resolution 53/03, as we explained in the June/July 2003 issue of **LATINLAWYER** ('Consumers' rights in Argentina: important new regulation affecting corporations'), certain clauses usually inserted in agreements with consumers are now considered abusive and consequently forbidden.

Although the new regulation grants companies more time to adapt contracts containing 'abusive' clauses to the current legal requirements – companies have until October 31, 2003—at the same time it further restricts the types of clauses that companies can legally insert in agreements with consumers.

Among the most relevant changes introduced by the new regulation the following are worthy of particular note:

- While the previous regime allowed companies to amend the agreements once they are already in force when the balance between rights and obligations of the parties in the agreement is not broken by said amendment, the current regulation does not permit any unilateral amendment of the agreement. In exchange, from now on there will be a mechanism through which the Secretariat will dictate exceptions to said prohibition.
- Contrary to the previous regulation which permitted companies to terminate in advance the agreements if certain criteria were met, the current rule does not permit such a termination except for the case of non fixed-term agreements where it is permitted a termination if there is an express provision in the agreement authorizing to do so and granting in any case a sufficient notice in advance.

To sum up, the new regulation further restricts the range of clauses that companies can legally insert into agreements with consumers, while at the same time retaining the most controversial features of the previous one, which was criticised for (i) imposing on companies the obligation to adapt contracts already in force to the new rules, irrespective of when they entered into; and (ii) imposing on companies an obligation to accept the local jurisdiction of the consumer's domicile, no matter where in the country the latter may be or where the consumer bought the product or received the services rendered by the companies. **LL**