

➤ Regulation on analysis of economic solvency and information to consumers

On August 3rd, 2023, the regulation establishing the form and conditions through which the supplier must comply with the obligation to analyze the economic solvency of the consumer (the "Regulation") was published in the Official Gazette. This obligation was recently introduced in Article 17 N of the Consumer Protection Law by virtue of Law No. 21,398 of 2021.

The Regulation also establishes information obligations and advertising prohibitions to protect hypervulnerable consumers and prevent over-indebtedness.

Obligation to carry out an economic solvency analysis

Prior to entering money credit operations, suppliers must carry out an analysis of economic solvency, based on objective conditions previously and publicly established, in accordance with background information obtained through official means of information and in compliance with the principle of no arbitrary discrimination.

For credit operations of more than 10 UF, at least the present income of the consumer and those foreseeable during the term of the credit agreement and the level of indebtedness and delinquency of the consumer in money credit operations must be evaluated. The assessment may consider other objective conditions such as employment status, assets, savings, fixed costs, payment behavior and the existence and quality of guarantees.

Information obligations

The supplier, or the intermediary that carries the communication, must inform the consumer of the result of the analysis, by physical or digital means, complying with the information content provided in article 8 and according to the format detailed in article 9 of the Regulation.

In addition, information obligations are established that complement the provisions of the CPA and other decrees and regulations related to the provision of financial services, specifying the information that must be delivered to consumers prior to credit operations in conjunction with the quotation sheet.

Protection of personal data

The supplier can only base its creditworthiness analysis on accurate and up-to-date data. Personal data may only be requested and collected for the purpose of economic solvency analysis, commercial risk assessment or compliance with regulatory or authority requirements.

No information may be requested from third parties unless they are obliged to comply with any of the obligations of the contract or when the consumer bases his ability to pay on the income of others. In any case, the third party must consent to the delivery of information.

Data relating to the consumer's ability or planning to have or raise children may not be processed, nor may presumptions or statistical data on the likelihood of having children be used. However, information may be requested on the number and age of individuals under economic dependence of the debtor.

La información contenida en esta alerta fue preparada por Carey y Cía. Ltda. sólo para fines educativos e informativos y no constituye asesoría legal.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43
Las Condes, Santiago, Chile.
www.carey.cl

By means of this type of provision, a certain contour is given to the principles of legality, purpose and proportionality in the processing of personal data related to the analysis of economic solvency.

Financial products and higher education institutions

In higher education institutions, providers may only offer and advertise money credit operations that are directly related to the financing of the provision of educational services.

Penalties for non-compliance with the Regulation

Infringements of the provisions of the Regulation may be sanctioned with the application of a fine of up to 1,500 Monthly Tax Units.

Entry into force

The Regulation will enter into force nine months after its publication, that is on 4 May 2024.

The full text of the Regulation is available at the following [link](#).

AUTORES: *Guillermo Carey, Kureusa Hara, Isabel Cantillana.*