

Legal 500

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Chile

Class Actions

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This country-specific Q&A provides an overview of class actions laws and regulations applicable in Chile.

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Chile: Class Actions

1. Does your jurisdiction have a class action or collective redress mechanism? If so, please describe the mechanism and outline the principal sources of law and regulation and its overarching impact on the conduct of class actions in your jurisdiction.

The jurisdiction of Chile does have a class action mechanism in Law No. 19,496 on Consumer Rights Protection ("Consumer Law"). The third paragraph of Title IV of the Consumer Law regulates the procedure for the defence of the collective or diffuse interests of consumers (collective action or class action) (Article 51 and subsequent articles of the Consumer Law).

For a class action to be filed, the Consumer Law must be applicable to the specific case. Article 2 of the Consumer Law lists the legal acts that are subject to this law. In general terms, it applies whenever there is a business exchange between a consumer and a supplier.

Consumers are defined as natural or legal entities who acquire, use, or enjoy goods or services as end-users through any form of legal transaction. Suppliers, whether natural or legal entities and either public or private, are those who regularly engage in production, manufacturing, import, construction, distribution, or sale of goods, or provision of services to consumers, in exchange for a price or fee. Therefore, in general terms, the Consumer Law applies to all types of mass consumption industries. In addition, the Consumer Law contemplates certain rules directed at specific suppliers: financial product and service providers, parking service providers, continuous service providers, and airlines, among others.

Article 2 bis of the Consumer Law provides that this Law shall not apply to the activities of production, manufacture, import, construction, distribution and marketing of goods or provision of services regulated by special laws, with the exception of: (a) matters not covered by these laws; (b) matters relating to class actions, and the right to seek compensation through such procedure; and (c) matters relating to the consumer's right to seek individual redress for compensation, provided that there are no compensation procedures in such special laws. Based on these exceptions, National Consumer Service ("SERNAC", acronym in Spanish for Servicio Nacional del Consumidor) and other parties with legal standing, have brought class actions against

suppliers regulated by special laws. This has sparked extensive doctrinal and jurisprudential debates on the scope of the speciality principle.

The procedure for class actions is the same throughout the country, being heard by the competent ordinary court.

The competent ordinary court conducts an admissibility test (Article 52(1) of Consumer Law). Once the action has been deemed admissible, the defendant supplier has ten days to reply (Article 52(2) of the Consumer Law). In addition, the court will order the publication of a notice in the media so that consumers who may have been affected by the conduct in question may take part in the class action (Article 53 of the Consumer Law). Once the claim has been answered, the parties are summoned to a conciliation hearing (Article 52(9) of the Consumer Law). If no agreement is reached, the court will issue a resolution with the substantial, pertinent, and disputed facts, and an evidentiary period of twenty days commences (Article 52(12) of the Consumer Law).

At the end of the evidentiary period, the court must issue its judgment, accepting or rejecting the class action. The judgment accepting the class action must comply with a series of requirements (Article 53(C) of the Consumer Law, in accordance with Article 170 of the Code of Civil Procedure). An appeal may be filed against the final judgment, which is heard by the corresponding Court of Appeal (Article 53(C)(3) of the Consumer Law). An appeal against the judgment of the Court of Appeal may also be made to the Supreme Court.

Finally, it should be noted that the enforceable judgment declaring the liability of the defendant will have an erga omnes effect (Article 54(1) of the Consumer Law).

2. What is the history of the development of the class actions/collective redress mechanism and its policy basis in your jurisdiction?

Class actions were introduced into Consumer Law in 2004, through Law No 19.955. Since then, the procedure for these actions has undergone several amendments.

Specifically, the requirements for admissibility of class actions have been revised several times (Law No 20.543 and Law No 21.081). All these amendments are designed to expedite the processing of class actions. Now, the only

prerequisites are that the action must be initiated by a party with legal standing and meet the requirements applicable to lawsuits as set out in the Code of Civil Procedure (Article 52(1) in conjunction with Article 51(1)(1) of the Consumer Law).

Key reforms introduced to the Consumer Law by Law No 21.081 include:

- Compensation in class actions may now be extended to moral damage, but only where the physical or psychological well-being or dignity of consumers has been affected, which must be proven. For its assessment, the court may set a minimum compensation level, often necessitating a special expert opinion to be paid by the offender. A fast and expeditious registration system via the SERNAC is established so that potentially affected consumers can access this compensation (Article 51(2) of the Consumer Law).
- Suppliers must provide the documents requested by the plaintiff, failing which they are assumed to concede to the plaintiff's claims (Article 51, final paragraph of the Consumer Law).
- Affected consumers are no longer permitted to participate in the trial but can appear to reserve their rights (Article 51(1)(3) of the Consumer Law).
- A new provisional measure halting disputed charges has been introduced (Article 51(1)(10) of the Consumer Law).
- Damages for violations of Decree Law No 211 on the Defence of Competition ("Decree Law No 211") can be sought by a class actions seeking, which must be brought before the Antitrust Court ("TDLC" the Spanish acronym for *Tribunal de Defensa de la Libre Competencia*) (Article 51(2) of the Consumer Law).

In the first decade of its existence (2004-2014), class actions were focused on the financial sector. Since 2014 class action had been expanded to virtually all markets, including those governed by special laws, sparking both doctrinal and jurisprudential debate.

In 2023, the Chilean government presented to the Congress a new bill to reform the Consumer Law titled "SERNAC Protects You" ("Reform No 16.271-03"). Among other, the bill seeks to give SERNAC powers to impose fines on suppliers who violate the Consumer Law.

3. What is the frequency of class actions brought in your jurisdiction, in terms of number of cases over the years and/or comparison to other types

of litigation?

According to SERNAC's data for 2024, more than 170 class actions had been filed since its incorporation into the Consumer Law. During the last five years, SERNAC, the main actor in the filing of class actions, has filed an average of 10.8 class actions per year. This number is extremely low compared to the number of civil cases that are processed annually before the ordinary courts of justice, which is because class actions are only recognized for the resolution of disputes related to the Consumer Law.

4. Are there certain courts or types of claims that are most prevalent (for example competition vs commercial litigation generally)?

Class actions are heard by the ordinary courts of justice, in accordance with the general rules (Article 50 A(1) of the Consumer Law) – ie, the court with civil jurisdiction (Article 134 and subsequent articles of the Organic Code of Courts). Exceptionally, class actions for damages for violations of Decree Law No 211 must be brought before the TDLC (Article 51(2) of the Consumer Law).

In Chile, class actions may only be based on the protection of the collective or diffuse interests of consumers whose infringement is caused by a violation of the Consumer Law or other regulations that establish rights in favor of consumers. Exceptionally, these actions may be brought before the TDLC for violations of Decree Law No. 211.

5. What is the definition of 'class action' or 'collective redress' relevant to your jurisdiction?

Article 50 of the Consumer Law establishes that actions may be brought either on an individual basis or for the benefit of the collective or diffuse interests of consumers. "Individual interest actions" are solely for defending the rights of an individual consumer. "Collective interest actions" are for defending the rights of a specific group of consumers linked to a supplier contractually. Finally, "diffuse interest actions" are for defending the rights of an undefined group of affected consumers.

6. What are the general 'triggers' for commencement of a class action or collective redress in your jurisdiction from a factual perspective?

The most common cases in which class actions have

been filed are related to the interruption of massive services, such as telecommunications, electricity or sanitary services, stock-outs in online purchases in events such as cyberday, the inclusion of abusive clauses in adhesion contracts, or the charging of overprices.

7. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

Article 2 bis of the Consumer Law provides that this Law shall not apply to the activities of production, manufacture, import, construction, distribution and marketing of goods or provision of services regulated by special laws, with the exception of: (a) matters not covered by these laws; (b) matters relating to class actions, and the right to seek compensation through such procedure; and (c) matters relating to the consumer's right to seek individual redress for compensation, provided that there are no compensation procedures in such special laws.

Based on these exceptions, SERNAC and consumer associations have initiated class actions against companies that carry out economic activities regulated by special laws, such as banks and financial institutions, sanitary service companies, electric utilities, highway concession companies, among others. In these cases, there have been disparate criteria, both in the way in which class actions are exercised and in the way in which they have been resolved by the courts:

- The courts have determined that the Consumer Law is applicable even when the matter is regulated by special laws, and therefore the imposition of fines is appropriate, in addition to compensation for damages suffered by consumers.
- In other cases, the Supreme Court has ruled that, if the legal right protected by the infringed sectorial norm is the same as that protected by the Consumer Law, a double fine cannot be imposed on the defendant company, by virtue of the non bis in idem principle.
- In other cases, the plaintiff recognizes the impropriety of the imposition of a double fine, so that the class action is only intended to obtain compensation for the damages suffered by consumers.

8. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

According to the Consumer Law, class actions are only

intended to protect the collective or diffuse interest of consumers. "Collective interest actions" are for defending the rights of a specific group of consumers linked to a supplier contractually. "Diffuse interest actions" are for defending the rights of an undefined group of affected consumers. Article 51 of the Consumer Law states that "The procedure indicated in this paragraph [establishing class actions] shall apply when the collective or diffuse interest of consumers is affected".

In conclusion, the conducts that can be judged through class actions in Chile correspond to infringements of the Consumer Law or any other regulation that establishes rights in favour of consumers that affect the collective or diffuse interest of consumers.

9. Are there any limitations of types of claims that may be brought on a collective basis?

Only conduct that has potentially affected the collective or diffuse interest of consumers, in the terms set out above, can be brought before a class action.

10. Who may bring class action or collective redress proceeding? (e.g. qualified entities, consumers etc)

Class actions may only be initiated by a party entitled to do so, namely: SERNAC; a consumer association established at least six months prior to the filing of the class action and acting with the approval of the board of directors; or a group of at least 50 consumers with the same interest in a claim (Article 51(1)(1) of Consumer Law).

11. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

Class actions may be initiated by SERNAC, consumer associations or a group of 50 or more consumers.

SERNAC is a decentralized public service of the State of Chile, with legal personality and its own assets, subject to the supervision of the President of the Republic through the Ministry of Economy, Development and Tourism. SERNAC has regional offices, which are domiciled in each of the regions of Chile.

Consumer associations are organizations formed by natural or legal persons, independent of any economic, commercial or political interest, whose purpose is to

protect, inform and educate consumers and assume the representation and defence of their rights, independently of any other interest. For the constitution of consumer associations, it is a requirement to establish a domicile in Chile.

The Consumer Law does not establish limits on the nationality of those who are part of the group of 50 or more consumers filing a class action, without prejudice to the fact that they must establish a domicile within the jurisdictional territory of the court hearing the case in accordance with Article 49 of the Code of Civil Procedure.

12. Are there any limitations on size or type of class?

According to Article 51(1)(c), for a collective interest to exist and, therefore, for a class action to be brought, the group of consumers affected in the same interest must be equal to or greater than 50.

13. Are there any requirements or prohibitions in sourcing this class?

If the purpose of the class action is to protect the collective interest of consumers, only those consumers who are identified or identifiable and who are linked to the defendant supplier through a contractual link may be part of the class. In this regard, Article 50(5) of the Consumer Law states "Actions brought in defense of rights common to a determined or determinable group of consumers, linked to a supplier by a contractual connection, shall be considered to be of collective interest".

In addition, pursuant to Article 9 of Law No. 20,416, a group of 50 or more micro and small companies may file class actions under the Consumer Law. However, SERNAC and consumer associations cannot bring such actions on behalf of micro and small companies.

14. Which courts deal with class actions or collective redress proceedings?

Class actions are heard by the ordinary courts of justice and, exceptionally, by the TDLC if their purpose is to compensate for damages caused by violations of Decree Law No. 211.

15. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

There are no jurisdictional obstacles to class action or

collective redress proceedings.

16. Does your jurisdiction adopt an "opt in" or "opt out" mechanism?

The enforceable judgment declaring the liability of the defendant(s) will have an erga omnes effect (Article 54(1) of the Consumer Law). However, an exception exists for those reserving their rights under Article 53, for whom the erga omnes effect does not apply.

The judgment will be made public, allowing others affected by the same issue to seek compensation or appropriate redress (Article 54(2) of the Consumer Law).

Interested parties have 90 calendar days from the last notice to exercise their rights before the same court that processed the trial (Article 54(C) (1) of the Consumer Law).

Within this 90-day period, interested parties may reserve their rights to pursue civil liability for both financial and moral damages in a separate trial. Importantly, the existence of the infringement, already established in the initial judgment, cannot be contested in this new trial. The judgment from the first case serves as conclusive evidence of both the infringement and the plaintiff's entitlement to damages. Therefore, the focus of the new lawsuit is solely on determining the amount of such damage (Article 54(C)(2) of the Consumer Law).

Whoever exercises his rights under Article 54(C) (1) of the Consumer Law shall not be entitled to bring another action based on the same facts. Likewise, those who do not reserve their rights shall not be entitled to initiate another action based on the same facts (Article 54(C)(3) of the Consumer Law).

As such, there is an opt-out mechanism for joining an action.

17. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

Pursuant to Article 52(1) of the Consumer Law, to be declared admissible class actions must be filed by SERNAC, consumer associations or a group of 50 or more consumers and must comply with the formal requirements established for all claims in Article 254 of the Code of Civil Procedure.

Article 254 of the Code of Civil Procedure states: "The complaint must contain: 1) the designation of the court

before which it is filed; 2) the name, address and profession or trade of the plaintiff and of the persons representing him, and the nature of the representation, as well as a means of electronic notification of the sponsoring attorney and of the legal representative if not designated; 3) the name, address and profession or trade of the defendant; 4) a clear statement of the facts and legal grounds on which it is based; and 5) the precise and clear statement, recorded in the conclusion of the petitions that are submitted to the court's decision".

18. What other mandatory procedural requirements apply to these types of matters?

There are no additional formal requirements for the filing of a class action in Chile.

19. Are normal civil procedure rules applied to these proceedings or a special set of rules adopted for this purpose?

Pursuant to Article 50(B) of the Consumer Law, the procedure contemplated in the Code of Civil Procedure, which are the general rules of procedure in Chile, shall apply to matters not covered by the procedural rules established for class actions in the Consumer Law.

20. How long do these cases typically run for?

The complete processing of class actions in Chile takes an average of five to eight years.

21. What remedies are available to claimants in class action or collective redress proceedings?

First, violations of the Consumer Law are punishable by fines of up to UTM300 (US \$22,000 approx.), unless a different sanction has been established (Article 24(1) of the Consumer Law). For example, false or misleading advertising will incur a fine of up to UTM1,500 (US \$109,000 approx.) (Article 24(2) of the Consumer Law). Failure to comply with the obligations established with respect to products whose use is potentially dangerous, or the provision of high-risk services, is punishable by a fine of up to UTM2,250 (US \$164,000 approx.) (Article 45, final paragraph of the Consumer Law).

Second, class actions may request compensation for damages, including pecuniary damage, and may also extend to moral damages provided that the physical or psychological well-being or dignity of consumers has been affected (Article 51(2)(2) of the Consumer Law).

Finally, the Consumer Law provides, among others, the following remedies: (a) the suspension of advertising broadcasts (Article 31(1) of the Consumer Law); (b) the declaration of annulment of clauses that have been qualified as abusive (Articles 16 and 16(A) of the LPC); and (c) in accordance with the provisions of Title V of Book II of the Code of Civil Procedure, in qualified cases and only once the lawsuit has been admitted for processing, the judge may order as a precautionary measure that the supplier provisionally cease the collection of charges of which the origin is being disputed in court (Article 51(1)(10) of the Consumer Law).

22. Are punitive or exemplary damages available for class actions or collective redress proceedings?

Article 53(C) of the Consumer Law establishes that in the event of aggravating circumstances of contravention liability, the compensation awarded to consumers may be increased by up to 25%. This increase was incorporated into the Consumer Law as a type of punitive damage.

23. Is a judge or multiple judges assigned to these cases?

Generally, class actions are heard by the ordinary courts of justice. In the first instance, the court is composed of a single judge. In the second instance, the action will be heard by a chamber of the respective Court of Appeals, composed of three judges. Finally, if the action is heard by the Supreme Court, it will be decided by a chamber composed of five judges.

If the purpose of the class action is the compensation of damages suffered by consumers because of infringements of Decree Law No. 211, it will be heard by the TDLC, composed of five judges. Then, the case may be heard by the Supreme Court, in a chamber composed of five judges.

24. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

There is no jury system in Chile.

25. What is the measure of damages for class actions or collective redress proceedings?

Damages in class actions will be determined by the

damages that can be proven at trial. In this regard, Article 50(6) of the Consumer Law states: "For the purposes of determining the indemnities or reparations that proceed on the occasion of complaints and actions it will be necessary to prove the damage". The damage that may be compensated in class actions includes both pecuniary and non-pecuniary damage.

Notwithstanding the foregoing, and as noted above, Article 50(C) of the Consumer Law allows for a 25% increase in the amount of compensation awarded to consumers as punitive damages in the event that the defendant supplier has incurred in aggravating circumstances of liability.

26. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

The Collective Voluntary Procedure ("PVC", the Spanish acronym for Procedimiento Voluntario Colectivo) is an alternative dispute resolution mechanism for consumer disputes. The PVC is defined as a procedure that "aims to obtain an expeditious, complete and transparent solution in cases that may affect the collective or diffuse interest of consumers", which is achieved through an agreement (Article 54(H) of the Consumer Law).

In class actions, the parties may reach an agreement to terminate the lawsuit at the conciliation stage. This stage must be decreed prior to the beginning of the evidentiary period. Here, the judge acts as mediator, striving for a full or partial resolution (Article 52(19) of the Consumer Law). In any case, the judge may call for conciliation as many times as he/she deems necessary (Article 53(B) of the Consumer Law).

27. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

Both agreements reached in the framework of a class action, or a PVC, must have subsequent judicial approval.

In the case of PVCs, it is established that the judge may reject the erga omnes effect if the agreement does not comply with the following minimum criteria: "1. The cessation of the conduct that could have affected the collective or diffuse interest of the consumers. 2. The calculation of the respective refunds, compensations, or indemnities for each of the affected consumers, when applicable. 3. A solution that is proportional to the damages caused, that extends to all the affected

consumers and that is based on objective elements. 4. The way in which the terms of the agreement will be enforced and the procedure by which the supplier will make refunds, compensate, or indemnify the affected consumers. 5. The procedures through which compliance with the agreement will be enforced, at the expense of the supplier" (Article 54(Q)(2) of the Consumer Law in relation to Article 54(P)(2) of the Consumer Law).

In the case of class actions, it is stated that "[a]ny settlement, conciliation or transaction must be submitted to the judge for approval". It goes on to state that "[i]n order to approve it, the judge must verify its conformity with the rules for the protection of consumer rights. The approval shall be without prejudice to the possible application of fines in case of violations of this law. However, the court shall consider the reparation of the damages caused by the supplier to reduce the amount of the fine up to 50%" (Article 53(B) (4) of the Consumer Law).

Further, in the case of class actions: (a) while there is no stipulated minimum content for these agreements, they must adhere to consumer protection rules; and (b) even if an agreement is reached, the supplier may still face penalties in the proceedings.

28. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

Every year SERNAC publishes its annual inspection plan, in which it sets out the industries and matters on which it will focus its annual activity, including the filing of class actions. In 2024, the annual inspection plan focused on auditing (i) companies that provide basic services, such as domestic drinking water, electricity, gas, telephony and internet; (ii) retail, supermarkets and pharmacies; (iii) transportation, buses and airlines; (iv) advertising in digital channels, social networks and influencers; (v) practices that affect the security and protection of consumers' personal data; and (vi) practices that affect hypervulnerable groups, such as the elderly, children and adolescents, or people suffering from illnesses.

The inspection plan for the year 2025 is currently in public consultation.

29. What trends in litigation are evident in the last three years in your jurisdiction in respect of class actions?

One of the main topics that have been discussed in recent

years with respect to class actions in Chile is the need to prove a contractual link between the affected consumers and the defendant supplier. Article 50(7) of the Consumer Law states that "in the case of collective interest actions, the contractual link between the infringer and the affected consumers must be proven".

Based on this rule, the Supreme Court has rejected class actions brought by SERNAC and consumer associations against companies convicted of violations of free competition. The rejection of the collective actions was since such companies do not have a direct link with consumers because they are higher up in the production or distribution chain.

In 2023 the Chilean Government presented Reform No 16.271-03 that seeks to eliminate the requirement established in Article 50(7) of the Consumer Law, which will allow class actions to be brought regardless of the existence of a direct contractual relationship between the affected consumers and the defendant supplier.

30. Where do you foresee the most significant legal development in the next 12 months in respect of collective redress and class actions?

Currently, the only legal modification proposed to class actions is the elimination of the requirement of a direct contractual link between the affected consumers and the defendant supplier established in Article 50(7) of the Consumer Law. Review answer to question 32.

31. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

In 2018, a consumer association deducted a class action against the representative in Chile of a car brand that informed consumers that its vehicles had low pollution emission levels, in circumstances that far exceeded the emission levels allowed in Chile. The class action requested the court to (i) order the recall of vehicles that

could not be repaired to comply with the gas emission limits established in Chile and condemn the defendant to replace them with others of similar characteristics; (ii) order the repair of those vehicles that could be modified to comply with the gas emission regulations in force; (iii) condemn the defendant to compensate all damages suffered by consumers.

During the trial, the parties reached a settlement agreement, in which the defendant agreed to (i) make the pertinent technical updates to the vehicles to comply with the gas emission standards established in Chile; and (ii) pay the consumers compensation for the damages caused.

32. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

Regarding the framework for the exercise of collective actions, the most relevant change to be introduced by Reform No 16.271-03 is the elimination of the need to prove a contractual link between the group of affected consumers and the supplier to claim damages through this type of procedure.

Currently, Article 50 of the Consumer Law requires a contractual link between the consumer group represented in a collective action and the supplier against whom the action is brought. This has led to the dismissal of lawsuits aimed at protecting the collective interests of consumers against companies that have violated various regulations, particularly those related to fair competition under Decree Law No 211. Courts have dismissed these cases against companies convicted of violations of free competition, which are upstream in the production/distribution chain due to the lack of a direct contractual link with consumers.

By Reform No 16.271-03 the government's proposed eliminate the need to prove a contractual link between the consumer group and the offending supplier, thereby broadening the scope for collective actions.

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