

Coming into effect of the Amendment to the Regulations of the General Law for Tobacco Control

On 15 January 2023, the Decree that Amends, Adds and Repeals Several Provisions of the Regulations to the General Law for Tobacco Control ("**Amendment to the Regulations**") came into effect. Below, we explain **(i)** the content and scope of the Amendment to the Regulations and **(ii)** the possibility of filing a constitutional claim (amparo proceeding) against the Amendment to the Regulations.

I. Content and scope of the Amendment to the Regulations.

The changes included in the Amendment to the Regulations have two fundamental impacts: **(i)** they restrict advertising, promotion and sponsorship of tobacco products; and **(ii)** they tighten restrictions on smoking in outdoor spaces located in restaurants, bars and hotels.

Regarding the first point, the Regulations prohibit advertising, promotion and sponsorship of tobacco products through any means of communication or dissemination, including within this category any type of printed, audio, visual, audiovisual communication, social networks, technological platforms of digital services, among others.

Regarding the second point, the Amendment to the Regulations tightens the restrictions that smoking-only areas are subject to. These areas must comply with the following characteristics:

- Be totally separate from so-called *100 percent smoke-free spaces*;
- Be located only in open air spaces, and never in an enclosed one;
- That no food and beverage consumption service is provided, and no recreational activities are carried out therein; and
- That they do not exceed 10% of the area of an establishment, solely considering the area destined to the provision of the food and beverage consumption service.

Pursuant to the Amendment to the Regulations, violations to its provisions may be sanctioned with a fine, temporary or definitive shutdown of the establishment, and arrest for up to 36 hours.

II. Constitutional claim (*amparo proceeding*) against the Amendment to the Regulations.

We consider that the provisions of the Amendment to the Regulations are mandatory for all its addressees as of its effective date, including those who provide beverage and food consumption services (restaurants). For this reason, pursuant to the Amparo Law, a claim against the Amendment to the Regulations may be filed within thirty business days after its entry into force. Therefore, the situation calls for prompt attention of the affected parties.

There are several arguments that can be raised in an amparo proceeding to challenge the Amendment to the Regulations. Among others: **(i)** it is unconstitutional, since it goes beyond the prohibitions contained in the General Law for Tobacco Control, **(ii)** it contains a restriction to the freedom of commerce that is disproportionate, and therefore unconstitutional, **(iii)** the restriction that it imposes on free commerce is not necessary, since the current legislation already contains measures to protect people from tobacco smoke, **(iv)** it breaches the principle of confidence in the stability of administrative acts, since many establishments have just made investments in the recent past to adjust their premises to the current legislation, **(v)** it breaches the process of regulatory improvement by failing to consider the remarks made by the interested parties, **(vi)** it breaches the principle of legal certainty, by establishing broad, vague and undefined concepts, etc.

If the amparo proceeding is filed, the restaurants could request a stay against the Amendment to the Regulations, which, if obtained, would allow them to continue operating their establishments without being subject to the new prohibitions until these amparos are resolved by a Collegiate Court or by the Supreme Court of Justice of the Nation.

We will be pleased to answer any questions you may have regarding the defense of your rights. If you need additional information, please contact:

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S I N C E R E L Y

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