

Published by: **Ministry of Customs and Trade**

## **REGULATION ON DISTANCE CONTRACTS FOR FINANCIAL SERVICES**

### **FIRST PART**

#### **Purpose, Scope, Grounds and Definitions**

##### **Purpose:**

**ARTICLE 1 – (1)** The purpose of this Regulation is to set down procedures and principles of distance contracts for financial services.

##### **Scope:**

**ARTICLE 2 – (1)** This Regulation covers distance contracts for financial services.

(2) If a contract relating to provision of a financial service covers the initial contract for supply of services and the associated successive transactions or different transactions of the same description effected by time, the provisions of this Regulation are applicable only on the initial contract.

(3) Where there is no initial contract for supply of services between the parties, but successive transactions are executed or different transactions of the same description are effected by time, Article 5 is applicable only on the first transaction. If transactions of the same description are not affected for a period longer than one year, the first subsequent transaction is considered and treated as the first of new subsequent transactions, and Article 5 is applicable on the first transaction.

(4) Without prejudice to the provisions of the relevant legislative instruments pertaining to preliminary information, format and mandatory contents of contract, and termination of contract, the provisions of Article 5, first paragraph of Article 6, first paragraph of Article 7 and Article 14 are not applicable on consumer credit agreements established in the form of a distance contract.

(5) The provisions of this Regulation are not enforceable on house financing agreements and on payments other than those related to banking, credit, insurance, individual pension and investment services.

##### **Grounds:**

**ARTICLE 3 – (1)** This Regulation is issued in reliance upon Articles 49 and 84 of the Law on Protection of Consumer no. 6502 dated 7/11/2013.

**Definitions:**

**ARTICLE 4 – (1)** In the context and for the purposes of this Regulation:

- (a) “Financial services” refers to all kinds of banking services, credit, insurance, individual pension, investment and payment related services; and
- (b) “Distance contracts for financial services” refers to contracts executed by and between supplier and consumer by using remote communication means within the framework of a system established for telemarketing of financial services; and
- (c) “Permanent data register” refers to short message, electronic mail, internet, disk, CD, DVD, memory card and all kinds of similar other media or tools which assure registration and unchanged copying of information sent by or to consumer so as to enable the consumer to examine such information for a reasonable period of time in accordance with its purposes, and which allow access to such information; and
- (ç) “Law” refers to the Law on Protection of Consumer no. 6502; and
- (d) “Supplier” refers to a natural person or a legal entity who offers services to consumers for commercial or professional purposes, or who acts in the name or account of the service provider, also including public legal entities; and
- (e) “Consumer” refers to a natural person or a legal entity acting for non-commercial or non-professional purposes; and
- (f) “Remote communication means” refers to all kinds of media or tools which allow establishment of a contract without any physical contact, such as letter, catalogue, telephone, facsimile, radio, television, electronic mail message, short message, internet and ATM; and
- (g) “Ancillary contract” refers to a contract relating to goods or services provided to consumers, in addition to contract goods or services, by a supplier, provider or third party with respect to a distance contract for financial services.

**SECOND PART**  
**Preliminary Information Obligation**

**Preliminary Information:**

**ARTICLE 5 – (1)** Before declaration of its intention as to establishment of a distance contract for financial services, the supplier is under obligation to inform the consumer on the following items in accordance with the remote communication means used:

- (a) Main fields of business, MERSİS number, open address, electronic mail address, telephone number and if any, other communication information of the supplier and if any, its representative; and

- (b) If there is any intermediary between supplier and consumer in the course of provision of financial services to consumer, name, title and open address of such intermediary, and in which position he is authorized to transact; and
- (c) Basic characteristics of financial service; and
- (ç) Total price, including all taxes, of financial service, and if its price cannot be calculated in advance by nature, the method of calculation of price, and if any, performance-related expenses, and if they cannot be calculated in advance, information as to payment of additional costs; and
- (d) If financial tools and means which carry some special risks by nature or depending on the transactions to be executed, or the prices of which vary according to the fluctuations in financial market beyond the control of supplier, or the past data of which does not constitute an indicator for future values are used in financial services, information about such tools and means; and
- (e) Information about other taxes and fees required to be paid by the consumer, if any; and
- (f) If the information provided is valid only for a certain period of time, information about such period of time; and
- (g) Information about payment and performance, and if any, commitments relating thereto; and
- (ğ) If some additional costs of use of remote communication means will be borne and paid by the consumer, information about such costs; and
- (h) Conditions, term and procedures of use of the right of withdrawal, and method of calculation of the amount, if any, the consumer will be liable to pay according to Article 11; and
- (ı) Open address, electronic mail address, telephone number and if any, other communication information to which the notice of withdrawal will be sent; and
- (i) Where the right of withdrawal cannot be used pursuant to Article 13, information as to under which conditions and circumstances the consumer cannot use his right of withdrawal or will lose his right of withdrawal; and
- (j) In the case of a financial service obligation which is repeated in continuous or regular intervals, minimum term of the agreement; and
- (k) Information about conditions of contract when the parties may unilaterally terminate the contract for just causes, and about penalties required to be paid thereupon, if any.

**Preliminary Information Method:**

**ARTICLE 6 – (1)** Before declaration of his intention as to establishment of a distance contract for financial services, the consumer is required to be informed by the supplier on all items of information listed in first paragraph of Article 5 in writing or by permanent data

register clearly, simply, understandably and legibly in at least twelve font size in accordance with the remote communication means used.

(2) In the event that a distance contract for financial services is established and executed through vocal communication means or via a medium presenting the contract within a limited area or time, it is sufficient to provide via such medium only the information mentioned in subparagraphs (c), (ç), (h) and (i) of first paragraph of Article 5. However, if and when consumer credit agreements are established and executed in the form of a distance contract via such tools or media, all of the preliminary information specified in the relevant applicable laws are required to be provided in writing or by a permanent data register a reasonable time before the contract is established and executed.

(3) It should be understandable that preliminary information is provided for commercial purposes in accordance with the remote communication means used. Where vocal communication means are used, the supplier or its representative disclose at the beginning of each call the identity of the supplier and the person using the vocal communication means, and the relationship of such person with the supplier, and the cause of request of call.

#### **Distance Contract For Financial Services:**

**ARTICLE 7 – (1)** The supplier is under obligation to issue a contract containing all of the following information in addition to the information listed in Article 5, and to provide all terms and conditions of that contract to the consumer on paper or by permanent data register:

(a) Name, surname, open address, if any, electronic mail address, telephone number and other communication information of the consumer; and

(b) A statement that consumers may file their applications for their complaints and objections to consumer courts or to consumer arbitration panels; and

(c) Information about warranty fund or other indemnification regulations, if any; and

(ç) Information about other ways of resolution to which the consumers may apply, if any; and

(d) Information about payment plan, if any.

(2) The obligation arising out of the preceding first paragraph is fulfilled either before declaration by the consumer of his intention to establish the contract, or in the case of execution of the contract by using a remote communication means unfit for information in writing upon demand of the consumer, immediately after establishment of the contract.

(3) At any time during the period of the contractual relationship, the consumer may request a written copy of the contract on paper without paying any fee therefor. Besides, the consumer is entitled to change the remote communication means used, if and to the extent it is fit for the nature of financial services.

**THIRD PART**  
**Use of Right of Withdrawal and**  
**Obligations of Parties**

**Right of Withdrawal:**

**ARTICLE 8 – (1)** The consumer is entitled to withdraw from distance contracts for financial services within fourteen days without paying any penalty and without showing any reason therefor. In contracts relating to insurance and individual pension, provisions of other legislative instruments pertaining to the period of use of the right of withdrawal which are in favor of the consumer are applicable.

(2) The period of use of the right of withdrawal begins as at the date of execution of the contract. However, if the date of provision of all terms and conditions of the contract to the consumer on paper or by permanent data register is later than the date of execution of the contract, then the period of use of the right of withdrawal begins as at the date the consumer becomes cognizant of all terms and conditions of the contract.

(3) The supplier is under obligation to prove that the consumer is duly informed about the right of withdrawal.

**Use of Right of Withdrawal:**

**ARTICLE 9 – (1)** It is sufficient for the consumer to send his notice of use of the right of withdrawal to the supplier in writing or by permanent data register within the period of use of the right of withdrawal.

(2) In use of the right of withdrawal, the consumer may use the form enclosed in the Annex hereto or may express a clear declaration of his decision of withdrawal. The supplier may provide an option in its internet site for use by the consumer for filling in this form or for expressing a declaration of decision of withdrawal. If the consumer is provided the opportunity to use his right of withdrawal through the supplier's internet site, the supplier is under obligation to immediately provide the consumer with an acknowledgement of receipt of the consumer's declaration of decision of withdrawal.

**Obligations of Supplier:**

**ARTICLE 10 – (1)** Within thirty days following the date of receipt of the notice of use of the right of withdrawal, the supplier is under obligation to refund to the consumer all payments, except for the expenses and fees mentioned in first paragraph of Article 11. In contracts relating to insurance and individual pension, provisions of other legislative instruments pertaining to the period of refund which are in favor of the consumer are applicable.

(2) The supplier is under obligation to make all repayments mentioned in the first paragraph hereof at once in accordance with the payment means used by the consumer at the time of purchase and without imposing any cost or obligation on the consumer.

(3) The consumer's declaration of acceptance for establishment of contract is fixed or recorded physically or electronically in accordance with the communication means used. The

supplier is under obligation to take necessary actions for transmission of the right of withdrawal and for physical or electronic recordings.

**Obligations of Consumer:**

**ARTICLE 11 – (1)** Within no later than thirty days following the date of delivery of his notice of use of the right of withdrawal, the consumer under obligation to refund to the supplier the fees of services already performed under the contract and ancillary contracts, and the costs already paid to public entities or administrations or to third parties, if any, and other moneys required to be paid pursuant to the legislation. If the consumer fails to make the required refunds and payments within this period of time, he is deemed not to have withdrawn from the contract. The money required to be paid, if compared to the total price of the services described in the contract, cannot exceed the portion of total price corresponding to the already performed services, and can by no means be deemed or treated as a penalty. For the purposes of this paragraph, the provisions of other legislative instruments which are in favor of the consumer are, however, reserved.

**(2)** If and when the consumer uses his right of withdrawal, if the supplier fails to prove that it has duly informed the consumer about the method of calculation of the amount referred to in subparagraph (h) of first paragraph of Article 5, the supplier cannot claim payment of the moneys mentioned in the first paragraph hereof.

**Effect of Use of Right of Withdrawal on Ancillary Contracts:**

**ARTICLE 12 – (1)** If the consumer uses his right of withdrawal, ancillary contracts, if any, also terminate without any obligation of payment of any indemnity or penalty.

**(2)** The supplier immediately informs the third party, being a party to ancillary contract, in writing or by permanent data register that the consumer has used his right of withdrawal.

**Exceptions to Right of Withdrawal:**

**ARTICLE 13 – (1)** The consumer cannot use his right of withdrawal in the following contracts:

**(a)** Contracts for financial services, the price of which may change depending on the fluctuations in financial markets for reasons beyond the control of the supplier, which change can also occur during the period of use of the right of withdrawal, and especially contracts for the following items:

- 1) Foreign exchange transactions;
- 2) Money market instruments;
- 3) Negotiable securities;
- 4) Participation units of investment funds and partnerships;
- 5) Futures contracts based on financial assets, and equivalent financial instruments based on cash settlement;
- 6) Forward interest rate agreements;
- 7) Interest, foreign currency and equity swaps; and
- 8) Option transactions and equivalent financial instruments based on cash settlement.

(b) Without prejudice to the provisions of other legislative instruments which are in favor of the consumer, contracts for travel and luggage insurance policies, the validity term of which is shorter than one month, or similar other short-term insurance policies.

(c) Contracts which are fully performed by the parties thereto upon clear approval and consent of the consumer, before the consumer uses his right of withdrawal.

## **FORTH PART**

### **Miscellaneous and Final Provisions**

#### **Method of Termination of Contract:**

**ARTICLE 14 – (1)** In distance contracts for financial services, it is sufficient for the consumer to provide the supplier or if any, the intermediary with his demand for termination of the contract by any remote communication means.

(2) The consumer cannot be forced to use a method for termination of the contract which contains and imposes heavier conditions than the method of establishment of the contract.

#### **Burden of Proof and Preservation of Information:**

**ARTICLE 15 – (1)** The burden of proving that the consumer is duly informed within the frame of the provisions of this Regulation lies with the supplier.

(2) The supplier is liable to keep for a period of three years all information and documents relating to its obligations relating to right of withdrawal, information and other matters.

(3) Those who mediate the establishment of distance contracts for financial services in the name of the supplier by using or letting others use the remote communication means within the frame of a system created therefor are under obligation to keep for a period of three years all records relating to transactions performed under this Regulation, and if demanded, to provide such information and records to the relevant entities, authorities and consumers.

#### **Telephone Charge:**

**ARTICLE 16 – (1)** If the supplier assigns a telephone line for communication of consumers with the supplier with respect to their contracts established hereunder, the supplier cannot choose a tariff which is higher than the ordinary phone charges with respect to this line.

#### **Effective Date:**

**ARTICLE 17 – (1)** This Regulation enters into force three months after the date it is published.

#### **Enforcement and Execution:**

**ARTICLE 18 – (1)** The provisions of this Regulation will be enforced and executed by the Minister of Customs and Trade.

**EXAMPLE FORM OF WITHDRAWAL**

(This form will be filled in and sent only if and when it is wished to use the right of withdrawal from the contract.)

- **TO:** (This section will be filled in by the supplier, and will contain name, title, address, if any, facsimile number and e-mail address of the supplier.)

- By this form, I hereby declare that I am using my right of withdrawal from the contract relating to provision of the following services.

- **Date of performance:**

- **Services being the subject of the right of withdrawal:**

- **Name and surname of consumer:**

- **Address of consumer:**

- **Signature of consumer:** (Only if sent on paper)

- **Date:**