

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

REGULATION ON HOUSE FINANCE AGREEMENTS

FIRST PART

Purpose, Scope, Grounds and Definitions

Purpose:

ARTICLE 1 – (1) The purpose of this Regulation is to set down the implementation rules, procedures and principles relating to house finance agreements.

Scope:

ARTICLE 2 – (1) This Regulation covers house finance agreements.

(2) For the purposes of the provisions of this Regulation, natural-person partners of house building cooperatives are also considered and treated as consumers.

(3) The provisions of this Regulation are applied for participation banks by considering the profit shares.

Grounds:

ARTICLE 3 – (1) This Regulation has been issued in reliance upon articles 39 and 84 of the Consumer Protection Law no. 6502 dated 7/11/2013.

Definitions:

ARTICLE 4 – (1) For the purposes and in the context of this Regulation:

- (a)** “Contractual interest rate” refers to a rate of interest which is included in house finance agreements containing fixed interest, and is used as a basis for payment plan, and is calculated by also taking into consideration the amount of interest prepaid by the consumer, if any; and
- (b)** “Current interest rate” refers to a rate of interest current as of the date of the relevant transaction in house finance agreements containing variable interest; and
- (c)** “Variable interest rate” refers to a rate of interest found by addition of margin rate to be applied by the house financing institution to reference interests and indices determined by the Central Bank of the Republic of Turkey; and

- (c) “Prepayment” refers to payment by the consumer of the full amount of his debt outstanding to the house financing institution or any portion thereof, not being less than the amount of one installment, prior to the end of maturity thereof; and
- (d) “Financial leasing agreement” refers to an agreement on financial leasing as defined in subparagraph (ç) of first paragraph of article 3 of the Financial Leasing, Factoring and Financial Companies Law no. 6361 dated 21/11/2012; and
- (e) “Delay interest rate” refers to a rate which is determined so as not to exceed the contractual interest rate for house finance agreements containing fixed interest or the current interest rate for house finance agreements containing variable interest, plus thirty percent thereof; and
- (f) “Permanent data storage” refers to short message, electronic mail, internet, disk, CD, DVD, memory card and all kinds of similar other tools or media which allow recording of information sent by or to the consumer, in such manner to permit examination of such information for a reasonable period of time for the intended purposes thereof, and copying of the information without change, and access to such information; and
- (g) “Law” refers to and stands for the Consumer Protection Law; and
- (ğ) “House financing institution” refers to and stands for the institutions listed in second paragraph of article 57 of the Capital Markets Law no. 6362 dated 6/12/2012; and
- (h) “House finance agreement” refers to an agreement aimed at extension of a credit facility to consumers for acquisition of a house, and lease of houses to consumers through financial leasing, and extension of a credit facility to consumers under security of houses owned by them, and extension of a credit facility for refinancing of such loans; and
- (ı) “Total cost of credit” refers to total sum containing all kinds of interests, taxes, duties and similar other legal liabilities and if any, all kinds of fees charged under different names, if any, except for the public fees and other legal liabilities charged at the time of transfer of title in the land registry and the penalties arising out of the house finance agreements; and
- (i) “Payment plan” refers to a schedule separately showing the principal sum, interests, taxes, duties and similar other legal liabilities and if any, fees or charges, together with installments, amounts and maturities thereof to be applied in the payments of the consumer under the house finance agreement; and
- (j) “Installment” refers to each payment amount calculated separately for each maturity in the payment plan, comprising total amount of principal sum, interests, taxes, duties and similar other legal liabilities; and
- (k) “Installment maturity” refers to the date of payment of each installment shown in the payment plan; and

- (l) “Consumer” refers to a natural person or legal entity acting for non-commercial or non-professional purposes; and
- (m) “Fee” refers to all kinds of monetary amounts charged on the consumer as fees, commissions, charges or under similar other names, except for interests, taxes, funds and similar other legal charges; and
- (n) “Yearly cost rate” refers to a rate found as a result of calculation of total cost of credit as a yearly percentage value of the credit.

SECOND PART

Pre-Agreement Information Obligation

Format of Pre-Agreement Information:

ARTICLE 5 – (1) The pre-agreement information form referred to in this Regulation is required to be issued in at least twelve font size in an understandable language openly, simply and legibly, and a copy thereof is required to be submitted to the consumer on paper or via permanent data storage.

Pre-Agreement Information Form:

ARTICLE 6 – (1) House financing institutions are under obligation to submit to the consumer a pre-agreement information form containing the terms and conditions of house finance agreement a reasonable time prior to the date of execution of the agreement and in such manner to cover the following information:

- a) Type of credit interest; and
- b) Name, MERSİS number, open address, telephone number and if any, other communication data of house financing institution; and
- c) Term of house finance agreement; and
- ç) Total credit amount and if any, fees to be charged on the consumer; and
- d) Distribution of total debt amount by principal sum, interests, taxes, duties and similar other legal liabilities and fees and charges; and
- e) Information as to whether an expertise survey is required for appraisal of value of house or not, and who is responsible for this expertise survey, and whether it will constitute a cost item for consumers or not; and
- f) If an account is opened with respect to house finance agreement, and only credit-related transactions are effected from this account, a statement that no fee will be charged for this account under any name whatsoever, and that this account will be closed upon repayment of loans, unless otherwise demanded by the consumer in writing; and
- g) Information as to delay interest rate; and
- ğ) Information as to guarantees to be requested, and if such guarantees are of a kind of personal guarantees taken against acts of the consumer, they will in any case be treated and considered as ordinary guarantees under any name whatsoever, and that personal guarantees given by the counterparty for receivables of consumer will be considered and treated as joint guarantees unless otherwise provided in the other laws; and

- h) A statement that credit insurance cannot be taken out without a clear and open demand of the consumer made in writing or via permanent data storage, and a clear statement that insurance-related services may be received also from a service provider other than the house financing institution; and
- i) A statement that if credit demand is not accepted, the consumer will be immediately informed thereabout free of charge; and
- i) Information as to conditions of transfer of credit facility by the house financing institution to another house financing institution or to another house, if any; and
- j) Information as to the period of time during which the information given prior to the agreement will be binding for the house financing institution; and
- k) Explanations as to definitions of credit types where fixed interest or variable interest or fixed and variable interests are jointly applied, and as to differences between these credit types; and
- l) In fixed interest credits:
 - 1) Contractual interest rate and yearly cost rate;
 - 2) Amount of each installment repayable according to the amount of loan to be borrowed;
 - 3) Information as to prepayment right of the consumer, and obligation of house financing institution to make a discount according to the prepaid amount, and the prepayment indemnity determined pursuant to second paragraph of article 37 of the Law; and
 - 4) A sample payment plan to be prepared by considering the amount of credit demanded by the consumer and two different maturity options, which may further be given as an attachment to the form; and
- m) In variable interest credits and in credits where fixed and variable interests are jointly applied:
 - 1) Information as to probable effects of financing on consumer;
 - 2) Information as to in which periods and according to which criteria the reference interests and indices serving as a basis for variable interest are to be determined;
 - 3) Yearly rate of reference interests and indices determined by the Central Bank of the Republic of Turkey;
 - 4) Margin to be applied by the house financing institution on these interests and indices;
 - 5) Monthly and yearly repayment amounts according to amount of loan to be borrowed;
 - 6) Contractual or current interest rates and yearly cost rate shown separately for initial and maximum interest rates;
 - 7) A statement that if loan repayments are made prior to the end of maturity thereof, a prepayment indemnity cannot be claimed; and
 - 8) A sample payment plan to be prepared over the current interest rate and the maximum interest rate applied by the house financing institution by considering the amount of credit demanded by the consumer and two different maturity options, which further contains a statement that monthly installments may vary up to the maximum interest rate and may further be given as an attachment to the form; and
- n) Legal results of failure of the consumer to make his payments on payment dates thereof, thereby falling in default therein; and
- o) A statement that a copy of expertise survey report of the house, if any, will be submitted if demanded so by the consumer.

(2) A pre-agreement information form relating to financial leasing transactions for house finance contains the information listed in first paragraph hereof with phrases and expressions corresponding to financial leasing transactions.

THIRD PART
Format and Mandatory Contents of Agreement

Format of Agreement:

ARTICLE 8 – (1) A house finance agreement does not become effective unless made in writing. A house financing institution which does not make a valid agreement cannot subsequently claim against the consumer the invalidity of such agreement.

(2) A house finance agreement is required to be issued in at least twelve font size in an understandable language openly, simply and legibly, and a copy thereof is required to be submitted to the consumer on paper or via permanent data storage.

Mandatory Contents of House Finance Agreements:

ARTICLE 9 – (1) A house finance agreement is required to contain the following data and information together with information given in first paragraph of article 6 hereof, except for information mentioned in subparagraphs (e), (i), (j) and (k) and item (4) of subparagraph (l) and item (8) of subparagraph (m) thereof, depending on credit types where fixed interest or variable interest or fixed and variable interests are jointly applied:

- a) Name and surname, open address, if any, telephone number and other communication data and information of consumer; and
- b) Payment plan which may further be given as an exhibit of the agreement; and
- c) Crediting terms and conditions; and
- ç) General information on the house being the subject matter of the agreement; and
- d) If the house finance agreement is in the form of a tied loan, explanatory information as to rights of consumer referred to in article 15 hereof, and as to use of such rights; and
- e) A statement that if maturity of an installment coincides with a day accepted and treated as a holiday in the applicable laws, it will automatically change to the first non-holiday day immediately thereafter; and
- f) A statement that compound interest cannot be applied in all kinds of transactions made in reliance upon house finance agreements, also including a case of default; and
- g) If the credit facility is made available in a foreign currency, information as to which date's exchange rate will be taken into consideration in calculation of repayment installments and total amount of credit; and
- ğ) A statement that consumer may file his application of dispute to consumer court or to consumer arbitration panel; and
- h) A statement that the consumer has the right to receive free of charge a copy of agreement signed between the house financing institution and the consumer for the first year following the date of execution thereof; and
- i) Information as to other ways of resolution for which the consumers may apply, if any.

(2) Agreements relating to financial leasing transactions for house finance also contain the information listed in first paragraph hereof with phrases and expressions corresponding to financial leasing transactions.

FOURTH PART
Rights and Obligations of Parties

To Take Out Insurance:

ARTICLE 10 – (1) An insurance cannot be taken out for credit without an open demand of the consumer made in writing or via permanent data storage. If the consumer wishes to take out insurance, the coverage provided by any insurers chosen by the consumer is required to be accepted by the house financing institution. This insurance is required to be compliant with the subject of credit, and in fixed sum insurances, with the remaining debt amount and maturity. In fixed sum insurances, the amount of cover in the insurance policy cannot be higher than the remaining loan amount. Maturity of insurance cannot be longer than maturity of credit. The law provisions pertaining to non-voluntary earthquake insurance are, however, reserved.

(2) In credit-related fixed sum insurances, insurance contract is terminated if the outstanding loans are repaid prior to the specified maturity, or in the case of a change in debt structure of loans. However, providing that the consumer is separately informed by the house financing institution and the consumer's clear consent is received as of the time of this transaction, the insurance policy may be continued under the existing terms and conditions, or the coverage amounts and validity periods of the existing insurance policy may be rearranged according to the changes in debt structure of loans.

Prepayment:

ARTICLE 11 – (1) The consumer may prepay the full amount of his debt outstanding to the house financing institution or any portion thereof, not being less than the amount of one installment, prior to the end of maturity thereof. Thereupon, the house financing institution is required to make the required discount according to the prepaid amount in accordance with the provisions of this article.

(2) If the consumer makes a prepayment, interests to be accrued over the remaining debt of principal sum and to be calculated by multiplying the contractual interest rate in fixed interest house finance agreements, or the current interest rate in variable interest house finance agreements, or the interest rate valid as of the date of prepayment in house finance agreements where fixed and variable interests are jointly applied, by the number of days which have passed since the date of previous installment, together with taxes, duties and other legal liabilities to be calculated over the interests, will be collected from the consumer. The amount remaining outside the collected interests and taxes, duties and other legal liabilities will be deducted from the outstanding debt of principal sum. Thereupon, a new installment amount is determined and a new payment plan is created, without any change in the number of remaining installments and in the payment dates, over the rate of interest changing according to the credit type. However, if demanded so by the consumer, a grace period may be determined according to the number of prepaid installments so that the number of installments will not be changed, or a number of installments and payment dates, different from the existing payment plan, may be determined upon written demand of the consumer and upon mutual agreement of the parties. The burden of proof relating to demands of consumer as referred to in this paragraph lies with the house financing institution.

(3) New payment plan is delivered to the consumer in writing or via permanent data storage without demanding any fee under any name whatsoever.

(4) If the interest rate is determined to be fixed, providing that it is specified so in the agreement, if the consumer prepays the full amount of his debt outstanding to the house financing institution or any portion thereof, not being less than the amount of one installment, prior to the end of maturity thereof, then the house financing institution may claim a prepayment indemnity from the consumer. Prepayment indemnity may not exceed one percent of the amount of principal prepaid by the consumer to the house financing institution in the case of credits the remaining maturity of which does not exceed thirty-six months, and may not exceed two percent thereof in the case of credits the remaining maturity of which exceeds thirty-six months. The amount of prepayment indemnity may in no case exceed the total amount of discounts to be made to the consumer. If the interest rate is determined to be variable, no prepayment indemnity may be claimed from the consumer.

(5) If the consumer prepays the full amount of his debt outstanding to the house financing institution or any portion thereof, not being less than the amount of one installment, prior to the end of maturity thereof, the prepayment discount or interest is calculated on the basis of the date of payment made by the consumer. This date may in no case be changed to the detriment of the consumer.

(6) If the consumer prepays the full amount of his debt outstanding to the house financing institution or any portion thereof, not being less than the amount of one installment, prior to the end of maturity thereof, the provisions of Annex-2 are taken into consideration.

(7) In credits where the full amount or a portion of interests is collected from the consumer in advance, the house financing institutions are under obligation to establish a system for making the required discount if the consumer makes a prepayment. In this case, the provisions of Annex-3 are taken into consideration.

Refinancing:

ARTICLE 12 – (1) Refinancing is made upon occurrence of at least one of the following cases in a house finance agreement upon mutual agreement of the house financing institution and the consumer:

- (a) a change in the credit interest rate; or
- (b) a change in the maturity of credit; or
- (c) a change in the type of interest specified in the house finance agreement; or
- (c) if more than one house finance agreements are executed by showing the same house as a guarantee, merger of them in a single house finance agreement; or
- (d) a change in the currency of credit.

(2) In the changes to be made in the house finance agreement as a part of refinancing, a prior consent of the consumer is received in writing or via permanent data storage. Prior to receipt of this consent, the house financing institution provides the consumer with comparative information containing changes made in the house finance agreement for refinancing purposes, in at least twelve font size in an understandable language openly, simply and legibly on paper or via permanent data storage.

Default and Late Payment:

ARTICLE 13 – (1) If the house financing institution has reserved its right to claim payment of the full amount of outstanding debts in case of a default of the consumer in payment of the installments, this right may be used only if the house financing institution has performed all of its contractual obligations and only if the consumer has fallen in default in payment of at least two consecutive installments. In order to be able to use this right, the house financing institution must have made a warning of acceleration by granting a minimum time of thirty days to the consumer.

(2) Interests, fees and charges are not taken into consideration in calculation of the accelerated installments.

(3) In the case of default or late payment, a delay interest at a rate higher than the contractual interest rate for fixed interest house finance agreements or the current interest rate for variable interest house finance agreements plus thirty percent thereof cannot be collected or charged, or otherwise, the house financing institution will be liable to pay to the consumer both the overcollected amount and an interest to be calculated over the contractual or current interest rate specified in the agreement plus thirty percent thereof for the period between the date of collection of such overcollected amount and the date of actual repayment thereof to the consumer.

(4) In the case of default or late payment of the consumer, the house financing institution may claim from the consumer the total sum of interests to be calculated over the principal sum included in the amount paid late by multiplying the delay interest rate by the number of days of delay, plus taxes, duties and other legal liabilities to be calculated over such interests. In calculation of delay interests that may be claimed from the consumer, the date of payment made by the consumer is taken as a basis. This period may in no case be changed or revised to the detriment of the consumer.

(5) In financial leasing transactions, if the consumer fails to perform his contractual obligations within the period of time granted in the warning of acceleration, if, upon expiration of this period of time, the house financing institution terminates the house finance agreement for use of its right to perform all of the outstanding obligations, then the house financing institution is under obligation to immediately offer the house for sales. Prior to sales, the house financing institution will have an appraisal made for the house by persons or entities authorized pursuant to the Capital Markets Law no. 6362. The value appraised as above is reported to the consumer at least ten business days prior to sales. The house financing institution sells the house by considering the appraised value and by acting as a prudent merchant. If the proceeds of sale of the house exceeds the outstanding debts, the amount in excess is immediately paid to the consumer. In financial leasing transactions for house finance, article 33 of the Law on Financial Leasing, Factoring and Financial Companies no. 6361 is not applied.

(6) Following completion of sales of house in accordance with fifth paragraph of this article and following payment of the portion of the proceeds of sale in excess of the amount of outstanding debts, if any, to the consumer, the consumer is, or if the possession has been transferred, the third parties holding the house in their possession are, under obligation to vacate the house. If the house is not vacated as above, the owner of the house may apply to execution proceedings against the consumer or the third parties holding the house in their possession, as the case may be, pursuant to articles 26 and 27 of the Execution and Bankruptcy Law no. 2004 dated 9/6/1932.

(7) In calculation of delay interests, the provisions of Annex-4 will be taken into consideration.

FIFTH PART

Miscellaneous and Final Provisions

Interest Rate:

ARTICLE 14 – (1) Portion of repayment amounts in credits and of lease amounts in financial leasing transactions in excess of principal sum is accepted and treated as interests under this article.

(2) Providing that it is specified so in the agreement, in credit facilities and financial leasing transactions for house finance, the rate of interest may be determined as fixed or variable or by applying both methods for the same credit facility. If the interest rate is determined to be fixed, the rate determined as at the date of execution of the agreement may not be changed beyond consent of the parties. If the interest rate is determined to be variable, the rate initially determined in the agreement may be varied on the basis of the lowest one of the indices generally accepted and commonly used in Turkey or abroad as will be determined in the agreement, provided, however, that the periodic repayment amount cannot exceed the maximum periodic repayment amount initially determined in the agreement. In this case, the reference interests and indices determined by the Central Bank of the Republic of Turkey are used. If the rates are determined to be variable, the consumers must absolutely be informed about probable effects of this method.

(3) Fixed interest house finance agreements will refer to only one single contractual interest rate. This contractual interest rate is taken into consideration in prepayment, default or similar other cases.

(4) Compound interest is not applied on consumer transactions, also including the cases of default.

(5) In the case of a change in the rate of interest in variable interest house finance agreements, this change is required to be notified to the consumer in writing or via permanent data storage, prior to the date of change, together with a new payment plan to be prepared over the new interest rates.

Tied Loan Agreement:

ARTICLE 15 – (1) Tied loan agreement is a type of agreement wherein the house financing credit is made available solely for financing of a contract of sales signed for a particular house, and these two agreements objectively constitute an economic unity.

(2) Economic unity is accepted to be reached upon existence of at least one of the following cases:

- a) the seller finances the credit facility for the consumer; and
- b) if financed by a third party, the house financing institution makes use of services of the seller with respect to preparation or signature of credit agreement; and
- c) it is clearly specified in the credit agreement that a particular house will be sold and delivered.

(3) In tied loans, if and when the consumer uses one of its rights of choice specified in article 11 of the Law due to non-delivery of the house at all or as required, then and in this case, the seller and the house financing institution will be held liable jointly and severally. However, liability of the house financing institution will be limited by the amount of loans borrowed and utilized and by one year following the date of delivery of house specified in the house sales contract or in tied loan agreement in the case of non-delivery of the house, or following the date the house is actually delivered in the case of delivery of the house.

(4) Even if the credit facilities made available by the house financing institutions are transferred to mortgage financing institutions or house financing funds, the liability of the crediting house financing institution continues. The institution taking over the credit facility cannot be held liable under this article.

(5) Credit facilities made available through payment by the crediting house financing institution of the price of a house designated by the consumer himself, without a contract or agreement relating to delivery of a particular house by and between the house financing institution and the seller, are not considered and treated as tied loans.

Yearly Cost Rate:

ARTICLE 16 – (1) House finance agreements are required to contain a yearly cost rate. In house finance agreements where interest rate is determined to be variable, the house financing institution is, in addition to the pre-agreement information form, under obligation to give information about a new yearly cost rate that may occur by considering the probable risks which may be caused by a substantial increase in the borrowing interest rate.

(2) Yearly cost rate is calculated according to the formula given in Annex-1. In calculation of this rate, the fees to be paid if and when the consumer fails to comply with any one of its obligations arising out of the credit agreement will not be included in total cost of the credit to the consumer.

(3) In calculation of the yearly cost rate, it will be assumed that the credit agreement will remain valid for the agreed upon term, and that the house financing institution and the consumer will perform their own contractual obligations at the dates and according to the terms and conditions specified in the credit agreement.

(4) If the agreement contains provisions permitting a change in the variable interest rate, and in the case of fees or charges, if any, which are included in the yearly cost rate, but are not definite at the time of calculation, in calculation of yearly cost rate, it will be assumed that interest rate and other fees and charges are fixed, and they will remain valid till the end of the credit agreement.

(5) If and when required, the additional assumptions specified in Annex-1 may be used in calculation of the yearly cost rate.

Guarantees:

ARTICLE 17 – (1) In house finance agreements, personal guarantees taken against acts of the consumer will in any case be treated and considered as ordinary guarantees under any name whatsoever. Personal guarantees given by the counterparty for receivables of consumer will be considered and treated as joint guarantees unless otherwise provided in the other laws.

Other Provisions:

ARTICLE 18 – (1) If an account is opened with respect to house finance agreement, and only credit-related transactions are effected from this account, no fee or cost will be charged on the consumer for this account under any name whatsoever. This account will be closed upon repayment of loans, unless otherwise demanded by the consumer in writing.

(2) An overdraft deposit account agreement related to house finance agreement cannot be executed without an open instruction of the consumer.

(3) Information about all kinds of fees and charges to be claimed from the consumer in reliance upon the house finance agreement is required to be given to the consumer in writing on paper as an attachment to the agreement. The burden of proof of delivery of such information to the consumer lies with the house financing institution.

(4) If maturity of an installment coincides with a day accepted and treated as a holiday in the applicable laws, it will automatically change to the first non-holiday day immediately thereafter.

(5) If the house financing institution allocates a telephone line for communication of consumers with respect to the agreement, for this telephone line, the house financing institution may not select a tariff rate which is higher than the ordinary tariff rate.

(6) If demanded so by the consumer, a copy of the expertise survey report, if any, of the house is submitted to the consumer.

Repealed Regulations:

ARTICLE 19 – (1) The Regulation on Procedures and Principles Regarding Pre-Agreement Information Form To Be Issued by House Financing Institutions, and the Regulation on Procedures and Principles Regarding Information of Consumers on Variable Interest House Finance Agreements, and the Regulation on Procedures and Principles Regarding Calculation of Prepayment Discount and Yearly Cost Rate in House Financing System, all promulgated in the Official Gazette edition 26538 on 31/5/2007, and the Regulation on Procedures and Principles Regarding Refinancing of Credits Under House Financing System, promulgated in the Official Gazette edition 26658 on 29/9/2007, are hereby repealed.

Effective Date:

ARTICLE 20 – (1) This Regulation becomes effective six months after the date it is published.

Enforcement:

ARTICLE 21 – (1) The provisions of this Regulation will be enforced and executed by the Minister of Customs and Trade.