

FINANCIAL LAW

LAW NR. 14/2012, OF MARCH 26, CONCERNING THE TERMINATION OF CONTRACTS FOR FINANCIAL SERVICES PROVIDED TO CONSUMERS CONCLUDED BY MEANS OF COMMUNICATION AT A DISTANCE

THIS LAW AMENDS THE LEGAL REGIME REGARDING THE TERMINATION OF THE ABOVE REFERRED CONTRACTS, WHICH NOW EXPRESSLY INCLUDES THE ANNEXED CONTRACTS. THESE AMENDMENTS HAVE CAME INTO FORCE ON MARCH 27, 2012.

It was approved, on February 24, 2012, Law Nr. 14/2012, which executes the third amendment in relation to termination of contracts relating to financial services provided to consumers concluded by means of communication at a distance and partially transposes Directive Nr. 2002/65/EC of September 23, concerning the marketing at a distance of financial services provided to consumers.

The amended Decree-Law Nr. 95/2006, of May 29, sets out the arrangements for the pre-contractual information and contracts relating to financial services provided to consumers by means of communication at a distance by providers authorized to conduct business in Portugal.

This Decree-Law introduced in our legal system duties of pre-contractual information specific to financial services providers at a distance, notwithstanding the imposition that such information and the terms of the contract are afterwards communicated to consumers on paper copies, or other durable media, before the later is bound by the contract.

For purposes of this Decree-Law, "contract at a distance" is any contract which formation and conclusion are made exclusively by means of communication at a distance, which integrate an organized system of sale or provision of services, for that purpose, by the provider; "means of communication at a distance" is any mean that can be used without the simultaneous physical presence of the provider and the consumer; and "financial services" means any banking, credit, insurance, investment or payment services and those services related to individual membership of open pension funds.

Under this Decree-Law, the consumer has the right to terminate, within a specified period, the contract concluded at a distance, without invoking any cause that justifies this termination and without any penalty imposed on the consumer. This right of free termination does not preclude the application of the general regime of contracts termination. However, the right of free termination does not apply to some situations, particularly when the contract involves the provision of services regarding financial instruments which price depends on market fluctuations, such as, for example, services related to foreign exchange transac-

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(CONTINUATION)

tions, money market instruments or securities. The right to free termination does not preclude the possibility of request by consumers, before the term of the period for exercising such right, of the beginning of the execution of the contract, in which case they are required to pay for the services that were actually provided.

Law Nr. 14/2012 has added to the faculty of free termination of the contract by the consumer (without giving any reason and without compensation or penalty thereof), the automatic and simultaneous termination of any contract which is annex to a contract at a distance when the annex contract is also a contract at a distance concerning financial services provided by a provider or a third party under an agreement settled with them, and provided that the consumer exercises his right of free termination under the law.

The said amendment is the only amendment made by this Law Nr. 14/2012 to the Decree-Law. Moreover, remains applicable the regime foreseen in the Decree-Law, and that, broadly speaking, is as follows: the deadline for exercising the right of free termination is of 14 days, except for contracts of life insurance and related to individual member-

ship of open pension funds, where the deadline is of 30 days; the deadline is counted from the date of conclusion of the contract or the date of receipt by the consumer of the terms and pre-contractual information, if later; the free termination must be notified to the provider by any mean susceptible of proof; the right to free termination shall expire when the contract has been fully complied with, after the request of the consumer for such purposes, before expiring the deadline for the exercise of the right of termination; the right of termination extinguishes the obligations and rights under the contract or transaction, with effect from its conclusion; in cases where the provider has received any money as payment for services, the provider has the obligation to reimburse it to the consumer within 30 days as from the reception of the notification of the free termination; the consumer may not waive the rights conferred to him by this legislation.

The law provides certain exceptions to the right of free resolutions, such as short term insurance, lasting less than one month.

It is considered an infraction punishable by a fine, amongst others: the practice of acts that, in any way, hinder or prevent the normal exercise of freedom of termination or the imposition of any compensations or penalties to consumers who legally exercise this right; the failure to reimburse the amounts received by the provider as payment for services within 30 days of receipt of the notification of the free termination; and the collection of any amounts from the consumer that exercises his right of free termination. Along with the fines, accessory penalties may be applied.

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