

## REGULATION THAT ESTABLISHES EXCLUSIONS TO THE RIGHT OF WITHDRAWAL IS PUBLISHED

Law No. 21,398 (known as the "**Pro-Consumer Law**"), which amended Law No. 19,496, Consumer Protection Act ("**CPA**"), reinforced the right of withdrawal in distance purchases, establishing that:

- Consumers may exercise the right of withdrawal or repentance, within a period of 10 days from receipt of the product, without expression of cause, with respect to all purchases of goods, without conditioning the right to the will of the supplier.
- The supplier shall inform consumers about the right of withdrawal in an unequivocal and accessible manner prior to the conclusion of the contract and its respective payment.
- The right of withdrawal also applies to face-to-face purchases in which the consumer had no direct access to the good.
- Only in the case of contracting services, the supplier may exclude the right of withdrawal, which must be clearly and unequivocally informed to the consumer.

On August 27th, 2024, the Ministry of Economy, Development and Tourism published in the Official Gazette the "Regulation that regulates the form and conditions in which suppliers must communicate the exclusion of the right of withdrawal and the goods in which, exceptionally and due to their nature, such exclusion shall be applicable" (the "**Regulation**").

This Regulation has been published after being submitted three times to the Comptroller's Office of the Republic for approval (first [on July 29, 2022](#); then on April 16, 2024; and, finally on July 2024) and comes to comply with article 3 bis letter b), fourth paragraph of the CPA with the regular objective: **(i)** the goods in which, exceptionally and due to their nature, the exclusion of the right of withdrawal is applicable; and **(ii)** the form and conditions in which the supplier must communicate such exclusion to the consumer when appropriate.

Among the modifications introduced by this Regulation, we highlight the following:

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## **Exclusions to the exercise of the right of withdrawal in respect of goods or products**

The Regulation provides that, in distance contracts, consumers may not exercise the right of withdrawal when the following are purchased:

- **Goods which by their nature cannot be returned.** These are goods that cannot be remarketed in the conditions originally offered, because they have been installed or used beyond their inspection, such as a washing machine after it has been installed or a computer used beyond its inspection.
- **Goods likely to deteriorate or expire rapidly.** These are goods that, in a period of less than 10 days from receipt, may suffer alteration or impairment of their functionality, effectiveness, appearance, quality or value, either because they are:
  - Perishable goods that must be kept under special conditions or that are intended to be used or consumed in a period of less than 10 days, such as those products that must maintain cold chains, fresh plants or flowers, fresh food products; or
  - Goods that, by the mere passage of such period, lose their suitability and/or functionality for the purpose for which they were offered and acquired, such as daily press articles and magazines.
- **Goods made according to the consumer's specifications.** They are those which, in whole or in part, were made or intervened according to the consumer's request, such as personalized or customized clothing, paintings whose color is made at the consumer's request, printing of photographs or other texts or images and optical glasses, unless such specifications or instructions have not been fully complied with by the supplier.
- **Sealed goods for personal use or hygiene.** These are those products that, due to their function or particular characteristics, are intended to be used by a person, either for hygiene or health reasons, and whose security seals have been opened or removed by the consumer after delivery, thus producing a health or hygiene risk, such as underwear, bathing suits, makeup and personal hygiene items such as toothbrushes, soaps or creams, among others.

## **Exclusions to the exercise of the right of withdrawal in service rendering contracts**

The Regulation provides that, in distance contracts, the right of withdrawal may be exercised within ten days from the contracting of the service and before the beginning of the provision of the same, unless the supplier has expressly stated otherwise and has so informed the consumer in a timely manner, in accordance with the requirements set forth below.

### **Communication of the exclusion of the right of withdrawal**

The Regulations require suppliers to communicate, in understandable terms, in an easily accessible manner and in Spanish language, the exclusions to the exercise of the right of withdrawal with respect to goods, when any of the hypotheses established by law, or services:

- Prior to the conclusion of the contract and/or payment of the price;
- In the same place and/or moment in which the price and characteristics of the product or service are informed;
- By means of an unequivocal and prominent warning, whose size shall not be less than the information regarding the price of the product or service offered. In such communication, suppliers shall use the concept “**right of withdrawal**”.

The above is without prejudice that the same information and warning is also included in the terms and conditions of the respective contract.

The Regulations also specifies that, in contracts entered by telephone calls, suppliers must:

- Specify which are the exclusions in a tone, rhythm, diction and detail that allows for proper understanding; and,
- Consult directly with consumers regarding the reception of the message and its understanding.

Finally, suppliers must make the necessary adjustments to guarantee that the exclusions are informed in an adequate, understandable and timely manner to persons with disabilities.

### **Entry into force**

The Regulation will enter into force six months after its publication in the Official Gazette, that is, on February 28th, 2025.

The see the full text of the Regulation in Spanish, please click the following [link](#).

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