

## REGULATION THAT ESTABLISHES EXCLUSIONS TO THE RIGHT OF WITHDRAWAL IS SUBMITTED TO THE COMPTROLLER'S OFFICE FOR APPROVAL

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:

1. 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.
2. 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.
3. The right of withdrawal also applies to face-to-face purchases in which the consumer had no direct access to the good.
4. 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 July 29th, 2022, 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") was submitted to the Office of the Comptroller General of the Republic for its acknowledgment.

This Regulation complies with the provisions of Pro-Consumer Law, which entrusted the Ministry of Economy, Development and Tourism with the issuance of a regulation governing this matter.

The purpose of such regulation is to determine (i) the goods in which, exceptionally and due to their nature, the exclusion of the right of withdrawal will be applicable to contracts entered into by electronic means and those in which an offer made through catalogs, notices or other form of distance communication is accepted; and (ii) the form and conditions in which the supplier must communicate such exclusion to the consumer when applicable.

### **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 acquired:

1. Goods that based on their nature cannot be returned or are likely to deteriorate or expire rapidly, meaning:



This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.  
Isidora Goyenechea 2800, 43<sup>rd</sup> Floor.  
Las Condes, Santiago, Chile.  
[www.carey.cl](http://www.carey.cl)

- a. Goods which, because they have been installed or used beyond their inspection, after their return cannot be remarketed in the conditions originally offered (such as a washing machine after having been installed or a computer used beyond its inspection).
  - b. Goods that, by the mere lapse of a period of time shorter than that of the exercise of the right of withdrawal, lose their suitability and/or functionality for the purpose for which they were offered and acquired (such as articles of daily press and magazines).
  - c. Perishable goods that must be kept under special conditions or that are destined to be used or consumed in a term shorter than the term of the exercise of the right of withdrawal (such as those products that must maintain cold chains, fresh plants or flowers, fresh food products).
2. Goods made or customized according to the specifications instructed by the consumer, unless such specifications or instructions have not been fully complied with by the supplier.
  3. Sealed goods for personal use or hygiene, such as toothbrushes or underwear, whose safety seals have been opened or removed by the consumer after delivery, thereby producing a health or hygiene risk.

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

The Regulation provides that, in the case of 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 informed the consumer in a timely manner, in accordance with the requirements set forth below.

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

The Regulation 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 or services:

1. Prior to the conclusion of the contract and/or payment of the price;
2. In the same place and/or moment in which the price and characteristics of the product or service are informed;
3. 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.

## **IV.** *Entry into force*

Notwithstanding the fact that it is pending approval by the Office of the Comptroller General of the Republic and subsequent publication in the Official Gazette, the Regulation will enter into force 6 months after its publication in the Official Gazette.

The complete text of the Regulation is available at the following [link](#).

**AUTHORS:** *Guillermo Carey, Aldo Molinari, Kureusa Hara, Eduardo Reveco.*