



Consumer Rights Under the New Consumer Protection Law

Governments are responsible for ensuring consumer rights in accordance with the safety, economic and social needs of the community. The necessity to establish coherence between Turkish and European Union legislation and to harmonize the Turkish Code of Obligations and the Turkish Commercial Code, as well as Turkey's growing economy and increased consumption habits, created the need to incorporate stronger consumer protection policies in Turkey. As a result, a new Consumer Protection Law (the "**New CPL**")¹ is recently enacted. The New CPL will enter into force on 28 May 2013. Until then, the current Law on Consumer Protection Law (the "**Former CPL**")² will remain in force.

General Provisions

The New CPL has assembled all existing legal concepts dealing with consumer contracts into a single and more comprehensive system resulting in more effective protection of consumer rights.

The New CPL specifically provides the fundamental principles applicable to consumer contracts. Among other fundamental principles, contracts and information required to be in writing must be prepared in a clear, simple and readable manner with at least a twelve point font. One copy must be provided to the consumer in paper or permanent digital form. Furthermore, contracts cannot be amended to the detriment of the consumer during the term of the contract. Consumers must not incur any additional expenses or costs for the performance that the consumer rightfully expects to be within the scope of the goods or services purchased.

Under the New CPL, personal guarantees (*şahsi teminat*) provided by consumers are deemed as ordinary surety (*adi kefalet*) regardless of its form and content. Unless otherwise provided by any other law, personal guarantees provided by the opposing party (e.g., seller or the service provider) to secure the claims of the consumers are deemed as several surety (*müteselsil kefalet*). The application of compound interest (*bileşik faiz*) to consumer transactions, including during default, is prohibited by the New CPL.

The New CPL has adopted a provision regarding unsolicited goods or services. Providing/delivery of these products or services to consumers or the silence of consumers in such case cannot be deemed as an implied "acceptance" for establishment of the contractual relationship. In such case, consumers are not under any obligation to return or preserve these unsolicited goods and services.

¹ Law No. 6502 published in the Official Gazette dated 28 November 2013 and numbered 28835.

² Law No. 4077 published in the Official Gazette dated 8 March 1995 and numbered 22221.

Notification Obligation

The New CPL has abolished consumers' obligation to send a notice regarding defective goods and services within 30 days.

The New CPL has preserved and restated the previous provisions regarding consumer rights in the event a defective good or service is provided. The consumer may rescind the agreement, claim for a discount, ask for free repair, if not extremely costly or ask for replacement, if possible. The consumer can also request compensation.

Statute of Limitations

Unless a longer period for statute of limitations is agreed by the parties or set forth by law, the statute of limitation for claims in relation to defective products or services is two years starting from the product's delivery/service's performance. That said, the statute of limitations for claims arising from residential property sale transaction is five years starting from the delivery of the residential property to consumers. The New CPL also addresses statute of limitations for the sale second hand goods.

Withdrawal Period

The New CPL has implemented a seven day withdrawal period in instalment sale agreements, whereas this period has been extended to 14 days for other consumer agreements. This amendment in favour of consumers intends to further protect the consumer rights by granting the consumer the opportunity to rethink the agreement's terms, conditions and consequences. Under the New CPL, suppliers must wait 30 days, as opposed to seven days under the Former CPL, to send a default notice to consumers in instalment sale, consumer loan and residential finance agreements.

Consumer Loans and Credit Cards

Furthermore, under the New CPL, credit institutions are prohibited from demanding subscription fees or any other fees under any name from consumers. The New CPL has established a new interest rate policy. It is prohibited to change the interest rates determined in a contract to the detriment of consumers. The New CPL also provides that in the event the contract does not include the contractual or effective interest rate or the loan's total cost, the loan agreement will be deemed as an interest free loan agreement.

Residential Property Sale

In addition to the foregoing novelties, the New CPL has included numerous new legal concepts, rights and obligations regarding the sale of residential properties. Residential property sale contracts may not be executed with an advance payment, unless the seller has a construction permit. In addition, the delivery of the residential property to consumers cannot be later than 36 months from the execution date of the residential property sale contract.

Advertising

The New CPL has broken new grounds in the advertising industry as well. Comparative advertising is now permitted. The companies will be able to advertise their products by means of comparing their products with the products of their competitors.

Resolution of Consumer Disputes

Under the New CPL, for disputes valued at less than TRY 2,000, consumers must submit an application to the district's consumer arbitral tribunal. For disputes more than TRY 2,000 and less than TRY 3,000 consumers must submit an application to the provincial consumer arbitral tribunal and for disputes more than TRY 3,000 consumers must apply to the consumer courts.

Financial Services' Distance Marketing

The New CPL has regulated "financial services' distance marketing", which is marketing of financial services through distance communication mediums. Financial services include banking, loan, insurance, personal pension, investment or payment services. The New CPL has explicitly prohibit pyramid schemes. Under the New CPL, forming, spreading or recommending a pyramid scheme, which promises to participants a benefit expectation in return for their money or assets, is prohibited.

Administrative Fines

The New CPL has increased administrative fines for violations of consumer rights. As opposed to 15 days period under the Former CPL, the New CPL has stipulated the period of filing a lawsuit against administrative sanctions before administrative courts as 30 days.

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