

ELUCIDATION
TO
REGULATION OF THE FINANCIAL SERVICES AUTHORITY
NUMBER: 1/POJK.07/2013
CONCERNING
CONSUMER PROTECTION IN THE FINANCIAL SERVICES SECTOR

I. GENERAL REVIEW

Article 4 of the FSA Law states that the Financial Services Authority is established with the goal of ensuring that the full range of financial services activities in the financial services sector operates in a regulated, fair, transparent and accountable manner and is capable of building a financial system marked by stable, sustainable growth and the capability of protecting the interests of consumers and the public.

Globalisation in the financial system and rapid advances in information technology and financial innovation have resulted in the creation of a highly complex, dynamic financial system characterised by interdependence among financial subsectors both in regard to products and institutions. Areas of focus for the Financial Services Authority include oversight an integrated financial services sector (conglomeration), uniform Consumer protection practices across all sectors of financial services, actions reflecting moral hazard and lack of optimum Consumer protection in the financial services sector.

Consumer protection in the financial services sector is aimed at creating a reliable system of Consumer protection, promoting empowerment of Consumers and fostering awareness among Financial Services Businesses of the importance of Consumer protection so that they are able to build public confidence in the financial services sector.

Envisaged tangible results include but are not limited to Financial Services Businesses paying attention to fairness in setting fees or prices for products and/or services, minimum fee-based pricing that does not disadvantage Consumers and the appropriate matching of offered products and/or services to the needs of Consumers and their ability to pay.

Market conduct is applied in a manner that balances between fostering the growth of the financial services sector and the fulfilment of the rights and obligations of Consumers in order to promote Consumer confidence. Market conduct consists of the behaviour of Financial Services Businesses in designing, formulating and delivering information, offering and making agreements for products and/or services, resolution of disputes and handling of complaints.

In this regard, efforts for protection of Consumers and/or the public are directed towards achieving two key objectives. First, to strengthen the confidence of investors and Consumers in each activity and line of business in the financial services sector (market confidence); and second, to provide fair, efficient and transparent opportunity for growth to Financial Services Businesses and on the other hand for Consumers to have an understanding of rights and obligations in dealings with Financial Services Businesses with regard to characteristics, services and products (level playing field). In the long term, the financial industry itself will also reap positive benefits that will drive improvements in efficient in response to demand for higher levels of service in provision of financial services.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory

Article 2

Letter a

The meaning of "transparency" under this letter is the provision of clear and complete information to Consumers about products and/or services in easily understood language.

Letter b ...

Letter b

The meaning of "impartial treatment" under this letter is the impartial and non-discriminative treatment of Consumers (discrimination is the different treatment of other parties based on ethnicity, religion and race).

Letter c

The meaning of "reliability" under this letter is all that may provide accurate services with the use of reliable systems, procedures, infrastructure and human resources.

Letter d

The meaning of "secrecy and security of Consumer data/information" under this letter is actions that provide protection for and safeguard the secrecy and security of Consumer data and/or information, using it only for the interests and objectives agreed by the Consumer unless stipulated otherwise by prevailing laws and regulations.

Letter e

The meaning of "complaint handling" under this letter is complaint services and/or resolution.

The meaning of "dispute resolution" is the implementation of a mediation agreement or decision of adjudication.

Article 3

Self-explanatory

Article 4

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c ...

Letter c
Self-explanatory

Article 5
Self-explanatory

Article 6
Paragraph (1)
Self-explanatory

Paragraph (2)
The following is an example of the obligation of a Financial Services Business not to provide a reason for rejection:
After a due diligence, a prospective savings Consumer is indicated to have involvement in money laundering in accordance with the provisions of Act Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. In this case, the Financial Services Business is not required to provide a reason for the rejection (anti-tipping off regulation).

Article 7
Paragraph (1)
Letter a
Self-explanatory
Letter b
Self-explanatory
Letter c
Self-explanatory

Paragraph (2)
The meaning of "another language" in this paragraph is a useful language, that is to say, a regional language or foreign language easily understood by Consumers.

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Paragraph (5) ...

Paragraph (5)

The meaning of "foreign language" in this paragraph is a foreign language used in international agreements.

Article 8

Paragraph (1)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Self-explanatory

Article 9

Self-explanatory

Article 10

Paragraph (1)

Self-explanatory

Paragraph (2)

An example covered by the prohibition on a Financial Services Business automatically extending facilities that incur extra charges without written consent from the Consumer is as follows: the Bank Financial Services Business has a facility for short message system banking provided to customers without written consent, for which it imposes extra charges.

Article 11

Paragraph (1)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Self-explanatory

Article 12

Paragraph (1)

The meaning of "amendment" in this paragraph is amendment encompassing the addition or reduction of benefits, costs, risks, conditions and the terms stated in documents and/or agreements concerning the products and/or services of a Financial Services Business.

Information may be conveyed using physical and electronic means, whether directly to each consumer or in the form of a public announcement.

Paragraph (2)

Self-explanatory

Paragraph (3)

The meaning of "Consumer deemed not to agree" in this paragraph is a Consumer expressing disagreement within a period of 30 working days. In the event that the Consumer does not agree, he/she shall not be charged any compensation or penalty. For example, if the interest rate of a time deposit is changed during a current year within the term of the deposit and the Consumer does not agree thereto, the Consumer may discontinue the product and/or service without incurring a penalty.

Paragraph (4)

Self-explanatory

Article 13

In determining the charges or pricing of financial service products and/or services, Financial Services Businesses shall give consideration to the fairness of charges or prices while taking into account the aspects of commercial viability and fair competition in conducting business.

Article 14

Paragraph (1)

Provision of education is intended to improve financial literacy, which consists of knowledge, skills and access in the financial services sector for Consumers and/or the public.

Paragraph (2) ...

Paragraph (2)

In principle, a report of the plan for provision of education shall be submitted annually, with efforts made for the report submission to be combined with reporting undertaken by the Financial Services Business, for example, reporting by the Banking System in the Bank Business Plans (RBB).

Reports of plans for provision of education may be submitted concurrently with the submission of other annual reports.

Paragraph (3)

Self-explanatory

Article 15

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 16

An example of considering appropriate matching to Consumer needs and ability to pay includes but is not limited to the following:

Consideration of Consumers in terms of need is directed towards Consumers placing funds or creditors (suitability), while consideration of Consumers in terms of ability to pay is for borrowing consumers or debtors (affordability).

Article 17

For example, a Consumer is in difficulty because of the sickness of his/her child and has run out of money and at the same time he/she is offered Collateral-Free Credit by an employee of a Financial Services Business. Because the Consumer does not have money for the hospital expenses, the Credit is ultimately accepted without thinking of ability to pay.

Article 18

Paragraph (1)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

An example of the provision under this letter b is a Multifinance Company offering a financing service package for purchase of a motor vehicle by adding a general insurance service in cooperation with Insurance Company A. The Multifinance Company cannot coerce the Consumer into selecting insurance services from Insurance Company A; instead, the Consumer may choose the insurance services other than Insurance Company A.

Paragraph (3)

Self-explanatory

Article 19

The meaning of "personal means of communications" in this paragraph is means of communications of a personal nature, for example, email, short message system and voicemail.

Article 20

Paragraph (1)

Letter a

Self-explanatory

Letter b

The meaning of "registered with" under this letter is having obtained a business licence, approval, registration, validation or effective statement from the Financial Services Authority.

Paragraph (2)

Self-explanatory

Article 21

Equitable treatment in drawing up agreements is, for example, when a Consumer has provided truthful and not misleading information and documents, the Financial Services Business shall keep and use the information and documents solely in the interest of the Consumer.

Non-partiality in drawing up agreements is, for example, when a Consumer has agreed to pay for a product and/or service of the Financial Services Business, the Financial Services Business must also provide the product and/or service in accordance with the agreement.

For example, fairness in drawing up an agreement is that pricing or charging for a product and/or service must be commensurate to costs expended.

Article 22

Paragraph (1)

A standard agreement as referred to in this paragraph is a written agreement established unilaterally by the Financial Services Business, containing standard clauses about the content, form or means of execution and is used to offer products and/or services to Consumers on a mass scale.

Paragraph (2)

Self-explanatory

Paragraph (3)

Letter a

Financial Services Businesses issuing products and/or services are prohibited from attaching a standard clause stating that should any problem arise, the product and/or service used by the Consumer does not constitute the responsibility of the Financial Services Business.

In an Agreement for issuance of a credit card, it is stated: "The cardholder absolves the Credit Card Issuer from responsibility and provision of compensation in any form whatsoever, that may arise from any complaint or lawsuit launched by the cardholder or his authorised representative."

This standard clause transfers responsibility that is legally borne by the business by contractually placing the burden on the Consumer.

Letter b

Consumers may not cancel the purchase of the product and/or services and request a refund of their money because the product and/or service does not conform to the agreement.

An example of a standard clause in a contract of commitment to sell and buy a house states that:

"the booking fee shall be valid for 7 days, and if 7 days pass without execution of payment, the party shall be deemed to have backed out of the arrangement and the developer shall be entitled to place the property back on sale."

Letter c

This provision confirms that a Financial Services Business may take unilateral action in regard to property placed by the Consumer as collateral if the Consumer and the Financial Services Business is bound by a separate agreement that is accessory to the main agreement concerning purchase of a product and/or financial services.

For example:

In the case of motor vehicle financing encumbered by fiduciary guarantee, the Financial Services Business is able to seize the property used for the fiduciary guarantee without the agreement of the financing Consumer, because the fiduciary guarantee is executed pursuant to the law concerning fiduciary guarantees.

Letter d

An example of a standard clause prohibited under this letter is: "In a claim, lawsuit or other legal case in which the Financial Services Business declares that damage or loss is caused directly or indirectly by one or more of the excluded

risks stipulated in this provision, the Consumer bears the obligation to prove to the contrary."

Such standard clauses are contradictory to legal principles for establishing proof, which state that the party putting forward an argument bears the burden of proof.

Letter e

Self-explanatory

Letter f

An example of a standard clause prohibited under this letter is:

An agreement for opening a new account at a Financial Services Business, stating the following:

"Subject to the terms and conditions in force at the Financial Services Business and all amendments thereto, which constitute an integral part of this account application form."

Based on the principle of good faith, the parties are bound by terms of agreement that should be known in advance. It is impossible for the parties to know and understand terms that do not yet exist.

Letter g

If a Financial Services Business places an encumbrance by mortgage, pledge or guarantee with regard to a product and/or service purchased by a Consumer with instalment payments, it must use a power or attorney separate from the main agreement.

Article 23

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory

Article 24 ...

Article 24

The meaning of "special needs" in this article is expressly limited to the blind, deaf and elderly aged 60 years or more.

The meaning of "special services" in this article includes but is not limited to provision of forms in braille script.

Article 25

Self-explanatory

Article 26

Self-explanatory

Article 27

Self-explanatory

Article 28

Self-explanatory

Article 29

The meaning of "errors and/or negligence" in this article is errors and/or negligence in conducting the business of the Financial Services Business, whether on the part of the management and/or employees of the Financial Services Business and/or third parties working on behalf of the Financial Services Business.

Article 30

Paragraph (1)

Self-explanatory.

Letter a

Self-explanatory

Letter b

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3) ...

Paragraph (3)
Self-explanatory

Article 31

Paragraph (1)
Self-explanatory
Paragraph (2)
Letter a
Self-explanatory
Letter b
Self-explanatory
Paragraph (3)
Self-explanatory
Paragraph (4)
Self-explanatory

Article 32

Paragraph (1)
Complaint service and resolution as referred to in this paragraph includes cases when a dispute arises, that is to say, a difference of opinion between the Consumer and the Financial Services Business pertaining to implementation of the rights and obligations of the parties, after receiving a complaint from a Consumer.
Paragraph (2)
Self-explanatory

Article 33

Self-explanatory.

Article 34

Paragraph (1)
Reporting shall take place in the form of a written report and/or through the integrated system mechanism provided by the Financial Services Authority.

For example, if a Custodian Bank receives a complaint from a Consumer, a customer holding a Securities account, the report and the follow up actions shall be submitted to the Chief Executive for Capital Market Supervision.

Paragraph (2)

Self-explanatory

Article 35

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c

Self-explanatory

Paragraph (4)

Self-explanatory

Article 36

Paragraph (1)

The meaning of "submit documents" in this paragraph is the submission of documents in person at an office of the Financial Services Business or submission of documents in writing.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 37

Self-explanatory

Article 38 ...

Article 38

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c

Self-explanatory

Article 39

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 40

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 41

Letter a

The meaning of "financial losses" herein is the value of the dispute.

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Self-explanatory

Letter e ...

Letter e

Self-explanatory

Letter f

Self-explanatory

Letter g

Self-explanatory

Article 42

Self-explanatory

Article 43

Self-explanatory

Article 44

Letter a

Self-explanatory

Letter b

Self-explanatory

Article 45

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 46

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 47

Paragraph (1)

Self-explanatory

Paragraph (2)
Self-explanatory

Article 48

Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 49

Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory
Paragraph (3)
Self-explanatory

Article 50

Paragraph (1)
Self-explanatory
Paragraph (2)
Letter a
Self-explanatory
Letter b
Self-explanatory

Article 51

Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 52

Paragraph (1)
Self-explanatory

Paragraph (2)

Self-explanatory

Article 53

Paragraph (1)

These types of administrative sanctions constitute sanctions that may be imposed by the Financial Services Authority for violations of this FSA Regulation, with consideration for aspects of guidance for the Party against whom these sanctions are to be imposed.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Article 54

Self-explanatory

Article 55

Self-explanatory

Article 56

The meaning of "internal arrangements" in this paragraph includes but is not limited to guidelines for setting of charges or prices for financial services products and/or services, the code of ethics of Consumer services, regulation concerning the consumer complaint mechanism, standard operating procedures concerning the written policy and procedures for Consumer protection, internal control system pertaining to Consumer protection and a unit and/or function for handling and resolving Consumer complaints.

Article 57

Self-explanatory

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