

## CONTRACT ON GIVING INFORMATION AND ADVICE (CONSULTING CONTRACT)

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**Abstract:** *The basic goal of every business entity is to maximize profits. To achieve this goal, different professional knowledge and experiences are required. They can relate to various areas of business, such as legal regime of business, financial operations, banking, organization of production, price policy, marketing, etc. The modern market enables the engagement of experts (such as insurance advisers, financial consultants, marketing experts, lawyers), who will provide the business entities with the necessary information and advice, according to the rules of the profession and customs. This relationship is a contractual relationship. In*

*English, this contract is called a contract on giving information and advice, in German, this contract is called *Beratungsvertrag*<sup>610</sup>. In Draft Common Frame of Reference (DCFR)<sup>611</sup>, this contract is called a contract on information and advice. In most countries, this contract is not specifically regulated by state law, although in practice it exists as a significant domestic and international commercial law contract. The legal norms, which regulate the rights and obligations of the contractual parties, are mostly contained in commercial customs and in state norms for some other contracts.*

*The aim of this paper is to analyze the basic legal issues of this contract, which, as a newer contract, contributes to the knowledge-based economic prosperity; to analyze his relationship and influence on other business contracts.*

*Contract on giving information and advice is a contract where one contracting party, a consultant, is obliged as a good expert to provide information and/or advice to another party, the client, and the client is obliged to pay the price of the service. Essential elements of the contract are information and advice, which are related to the business (existing or planned) of the client. Information is the knowledge of the existence or non-existence of facts in reality. Advice is a proposal for a particular client behavior, for example to make some kind of decision. Information and advice must be given in a manner, in a form, on time, in place, as agreed and customary, always in accordance with the best interests of the client. By its legal nature, this is a contract for services (service contract). A contract for services is a contract by which a provider of services agrees to provide a service to a client in exchange for a price. Contract for*

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<sup>610</sup> Other terms are consulting contract, contract for the provision of information and advice, Consultingvertrag. Terms in use in the Republic of Serbia are Ugovor o davanju informacija i saveta, Ugovor o konsaltingu, Ugovor o savetodavnim uslugama.

<sup>611</sup> DCFR, prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law, Book IV, Specific contracts and the rights and obligations arising from them, Part C, Services, Chapter 7, Information and advice.

*services can be entered into verbally or in writing. In legal systems that do not regulate the contract for services, the application of norms of other related contracts comes into consideration<sup>612</sup>.*

*The basic obligation of the consultant is to provide information and/or advice to the client. It is essentially an intellectual work. The important question is whether this is an obligation of means or obligation of result. Other obligations of the consultant serve the basic one (obligation to collect preliminary data, obligation to acquire and use expert knowledge, obligation of skill and care, conformity, obligation to keep records, obligation to disclose any possible conflict of interest, obligation to keep business secrets). The basic obligations of the client are payment to the consultant and the obligation of cooperation.*

**Key words:** *consulting contract, contract on giving information and advice, *Beratungsvertrag*, contract for services, information, advice*

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<sup>612</sup> *For example see Articles 600 and 749 of the Serbian Law on Obligations; Закон о облигационим односима, „Сл. лист СФРЈ” бр. 29/78, 39/85, 45/89, 57/89, „Сл. Лист СРЈ” бр. 31/93*