

newsletter

ADDENDUM | BANKING & FINANCE | HUNGARY |

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BANKING & FINANCE LAW

Follow-up on foreign exchange loan agreements

In our latest newsletter of 24 September 2014, we informed you of the adoption of Act XXXVIII of 2014 on the Settlement of particular issues related to the Uniformity Decision of the Supreme Court (“**Act 1**”) which sets out the nullity of certain provisions of foreign exchange lease agreements.

While we were publishing this newsletter, the Hungarian government adopted the new Act XL of 2014 (“**Act 2**”) on Further Provisions and Rules of Settlement, which were left out of Act 1. Act 2 completes and modifies Act 1, and sets out rules on the legal structure and the guiding principles that influenced the legislator in setting out the basic rules of settlement. It was promulgated on 6 October 2014 and came into force on 15 October (certain provisions will come into force on 1 November).

As indicated in our latest edition, Act 1 states that the exchange rate gap clauses (i.e. clauses under which different exchange rates apply to disbursement and repayment) inserted in foreign exchange or Hungarian Forint credit and loan agreements and financial lease agreements related to consumers, shall be deemed invalid, together with the unilateral amendment option clauses presumed to be unfair. The invalidity only applies to the prohibited clauses. The other provisions of the agreement remain in force, notably the interests, costs, fees or rates applicable when the agreement was concluded.

When such clause is annulled, a refundable amount called “overpayment” should be paid back to the consumer. Under the Act 2, the amount of the overpayment shall be the following:

- in the case of exchange rate gap: the difference between (i) the amount of the loan disbursed under the invalid clause and then converted according to the official foreign exchange rate of the Hungarian National Bank (“**HNB**”) valid on the day of performance, and (ii) the amount of the instalment payments performed by the invalid clause and converted according to abovementioned HNB exchange rate;
- in the case of unfair unilateral amendment option clauses: the margin of the converted instalment payments that favours the client, calculated upon disregarding interests, costs and fees paid after the invalid clause.

Consequently, the first step of the settlement is the calculation of the consumers’ claim. This calculation, based on the construction of prepayment, requires a special method which is will shortly be set out in an HNB decree.

Act 2 applies to all consumer loan contracts still in force. It also applies to those terminated either after 26 July 2009 or before 26 July 2009, but, in the latter case, to which no statute of limitations has been applied or which have been transferred to a factor. This means that, for contracts still in effect, capital sums due by the consumer shall be reduced by the amount of the overpayment. For terminated contracts, overpayment may be claimed in court.

Furthermore, it is important to mention that Act 2 stipulates specific rules to consumers falling within the scope of final repayments or exchange rate caps, and whose real property was purchased by the National Asset Manager. Moreover, in order to re-establish some order in a Hungarian legal system that is struggling to cope with the widespread concern deriving from the settlement of foreign exchange loans, new provisions were introduced as regards civil procedure, judicial enforcement and accounting in addition to the moratorium on the unilateral increases in interests, costs and fees, which will be borne by financial institutions until 30 April 2016.

Financial institutions must settle with their clients according to strictly prescribed dates between 15 January 2015 and 30 November 2015 and automatically send the settlement agreements by letter to the consumers' concerned. Legal redress is also available for consumers who may contest the content of the settlement by filing a complaint and, in the event of dismissal, by filing an appeal against the decision to HNB, which is in charge of checking the settlement. Furthermore, the government intends to convert all Swiss franc- and euro-denominated consumer loans into forints and to ban all FX loans before the end of 2014.

CONTACTS

FRANÇOIS D'ORNANO
ornano@gide.com

ÁKOS KOVÁCH
kovach@gide.com

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