

## HARMONIZATION OF HUNGARIAN LAW REGARDING CONSUMER CREDIT

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### A. INTRODUCTION

As the volume of loans granted to consumers steadily increases in Hungary, consumer credit forms a developing sector of the activities of financial institutions and store chains. Due to the intensifying competition in the banking sector, financial institutions are offering loans on more favourable and accommodating terms in order to gain new clients. Under Hungarian consumer protection legislation, which is in a large part harmonized with EU standards, those who offer consumer credits are under the strict obligation to provide consumers with comprehensive information regarding the conditions of the loan granted, in lack of which consumers are entitled to various protective measures, e.g. in addition to civil claims consumers may initiate unfair competition claims for misleading or consumer protection supervisory authorities may initiate claims in their interest.

### B. REGULATORY BACKGROUND IN HUNGARY

The regulation in Hungary on the granting of consumer credit distinguishes between **(i)** granting loans to consumers by financial institutions and **(ii)** granting of loans by other business associations (in the form of installment payment plans or deferred payments). The first category is regulated by Act CXII of 1996 on Credit Institutions and Financial Enterprises (“Financial Institutions Act”), the latter by Act CLV of 1997 on Consumer Protection (“Consumer Protection Act”). Additionally, **(iii)** Act LVII of 1996 on Unfair Competition (“Unfair Competition Act”) prohibits the misleading of consumers, and therefore requires that the lending institution provide sufficient and adequate information to the consumer concerning all conditions for the credit, including the consumer’s rights and obligations.

Both the Financial Institutions Act and the Consumer Protection Act provide that the consumer loan agreement be in writing, with the original copy to be given to the consumer.

#### **(i) Consumer loan granted by financial institutions**

Financial institutions such as credit institutions (financial institutions licensed to receive and maintain funds and to perform financial services) and financial enterprises (financial institutions licensed to perform one or more financial services) may grant consumer loans in accordance with the Financial Institutions Act. The Act defines a consumer loan as a loan granted to a natural person for the acquisition or repair of consumer goods or for the obtaining of services primarily used for personal, family or household purposes (and not for the person’s business activities), without attaching a specific purpose to said loan.

The Financial Institutions Act sets out in sections 212 to 214 stringent obligations on the lending financial institution with respect to adequate consumer information on loan conditions and costs. Consequently, the loan agreement can be contested if it does not include:

- the full loan charge indicator, expressed in annual percentage rates;
- detailed provisions regarding the conditions or circumstances under which the loan amount (payback) may be modified;
- specifications and amount of other costs not taken into consideration when calculating the loan amount (payback);
- specification of the required collateral;
- and indication of insurance policies required of consumer in connection with the loan agreement.

As for the termination of the agreement, the loan may only be nullified in the consumer's interest, and the consumer also retains the right to early repayment of the loan along with a corresponding reduction in the loan fee.

#### **(ii) Consumer loan granted by business associations**

The Consumer Protection Act applies to all loans which do not fall under the scope of the Financial Institutions Act; that is, all loans, installment payment plans or deferred payments provided by business associations to consumers to enable them to purchase their goods or services. The Act defines a "consumer" as a natural person who purchases, orders, receives or uses goods for non-commercial purposes; and further stipulates that the loan agreement shall be null and void if it does not include:

- a description of the goods or services comprising the subject of the loan agreement;
- the consideration payable pursuant to the loan agreement;
- date and conditions for transferring ownership rights;
- all costs related to the loan agreement, including accrued interest and commission charges and the value of such as expressed by an annual percentage rate;
- the conditions for amending the loan amount (payback) expressed as an annual percentage rate;
- the number, amount and dates of installment payments;
- the applicable conditions and the amount of which the consumer is allowed to withdraw from the loan agreement without suffering prejudice, if the price of goods or the service fee is subject to change during the term of the loan agreement.

The Consumer Protection Act further provides that any and all contractual clauses which deviate from the Civil Code's regulations on consumer loan agreements, and are to the disadvantage of the consumer shall be null and void. Once again, the lender's obligation to inform the consumer is emphasized: consumers must be informed of all contractual conditions that are required by law to be included in the contract.

### **(iii) Consumer protection according to Unfair Competition Act**

The prohibition of misleading consumers contained in Section (8) of the Unfair Competition Act coincides with the afore-mentioned obligation to provide consumers with adequate information. Several decisions of the Hungarian Competition Office deal with the misleading of consumers in connection with the granting of loans. In its Decision 65/2000, the Office stated that the information given by the financial institution was insufficient and may have misled the consumer, because the information revealed solely the benefits of the loan without mentioning other costs which could be prejudicial to the consumer. In Decision 34/2000, the Office found that insufficient information concerning the interest charge payable after a consumer loan and the monthly installments may have misled the consumer and therefore infringed the provisions of the Unfair Competition Act.

The above cited decisions underline the great importance of providing information which is sufficient for the consumer to make a well-informed decision about the financial services offered.

## **C. HUNGARIAN REGULATIONS IN LIGHT OF COUNCIL DIRECTIVE 87/102/EEC**

The Council Directive seeks to protect consumers, who are defined as natural persons acting for purposes outside of their trade or profession, from unfair credit terms by requiring the provision of adequate information, and by seeking to harmonize the general conditions governing consumer credits. For the purposes of the Council Directive, a "credit agreement" is an agreement whereby a creditor grants, or promises to grant, credit to a consumer in the form of a deferred payment, a loan, or another similar financial arrangement. The Council Directive regulates the granting of credit to consumers regardless of whether they are granted by financial institutions or by other business associations, and sets forth a broad range of basic information which must be provided to consumers.

The Hungarian Parliament amended both the Financial Institutions Act and the Consumer Protection Act to reflect the provisions of 87/102/EEC, thus harmonizing Hungarian consumer loan regulations with EU standards. The new Hungarian legislation incorporates all provisions of the Council Directive obliging the creditor to provide information regarding the conditions and costs associated with the credit. Furthermore, both the Council Directive and the Hungarian legislation provide that the consumer is entitled to discharge his obligations under a credit agreement before the due date, in which case the consumer shall be entitled to a corresponding and equitable reduction of the total cost of the credit.

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