

Legal Alert – 7 November 2011

Amendments to the Civil Code of Ukraine

On 16 October 2011, the Law of Ukraine "On Amendments to Specific Legislative Acts of Ukraine Aimed at Governing Relations between Creditors and Consumers of Financial Services"¹ (the "**Law**") and amended a number of regulations. In particular, the Law introduced amendments to the Civil Code providing that a loan interest rate may be fixed or floating. The type of the interest rate shall be determined in the loan agreement upon the creditor's and the debtor's consent.

The Law also prohibits rendering (obtaining) of consumer loans in a foreign currency in the territory of Ukraine.

The Civil Code of Ukraine provides for the following definitions of the fixed and floating interest rates.

Fixed interest rate means a rate that remains unchanged throughout the term of the loan agreement. Unlike the floating interest rate, the fixed rate cannot be unilaterally increased by the bank. If a loan agreement contains a condition allowing unilateral change of the loan interest rate, such condition shall be recognized null and void.

Floating interest rate means a rate that may be independently changed by the creditor at the intervals determined by the loan agreement, in accordance with the terms and procedure established by the loan agreement.

In such case the Civil Code of Ukraine obliges the loan provider (bank, financial institution) to inform the borrower, the surety and other persons bound by the agreement in writing about the change of the interest rate at least 15 calendar days prior to the date the new rate will start to apply.

The Law also introduces the notion of index i.e. a value according to which parties may increase or reduce the loan interest rate and which should allow to determine the exact amount of the loan interest rate at any moment during the term of the loan agreement.

The Law establishes criteria for any index used as a reference to determine the applicable floating interest rate. In summary an index must:

- be published on a regular, and at least on a monthly, basis through an accessible media source and the particular loan agreement must include reference to such source;
- be calculated on the basis of objective financial data; and



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¹ Law of Ukraine No. 3795-VI "On Amendments to Specific Legislative Acts of Ukraine Aimed at Governing Relations between Creditors and Consumers of Financial Services" dated 22 September 2011.

- be established by an independent financial institution which has an acknowledged reputation in the financial services market.

The loan agreement which provides for use of the floating interest rate shall also determine the maximum points by which the interest rate may be increased.

It should be noted that the amendments introduced by the Law will not apply to the agreements concluded before the day the Law took effect.

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