

*Unofficial Translation as of September, 2011*

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Initiator: Member of Parliament of Ukraine  
Sponsor(s): [Ms. Korolevska N.Yu., 6<sup>th</sup> convocation](#)  
Lead Committee: Economic Policy Committee  
Put forward to the Committee for consideration: (September 5, 2011)

**COMPARATIVE TABLE  
for the Draft Law of Ukraine “On Amending Some Laws of Ukraine on Consumer Protection in Financial Services”**

| <b>Civil Code of Ukraine</b>  |  |
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| <p>Article 345. Lending transactions of banks</p> <p>1. Lending transactions consist in placing by banks, on their behalf, on their conditions, and at their own peril, funds raised from legal entities (borrowers) and citizens. Lending transactions are bank transactions recognized as lending transactions by the law on banks and banking.</p> <p>2. Lending relations shall be carried out based on a loan agreement entered into by and between the creditor and the borrower in writing. <b>The loan agreement shall specify the objective, loan amount and term, its origination requirements and procedure, types of collateral pledged by the borrower, interest rates, loan repayment procedure, obligations, rights and liability of parties with respect to making and paying off the loan.</b></p> | <p>Article 345. Lending transactions of banks</p> <p>1. Lending transactions consist in placing by banks, on their behalf, on their conditions, and at their own peril, funds raised from legal entities (borrowers) and citizens. Lending transactions are bank transactions recognized as lending transactions by the law on banks and banking.</p> <p>2. Lending relations shall be carried out based on a loan agreement entered into by and between the creditor and the borrower in writing, <b>and essential terms and conditions of which shall be the subject matter, loan amount, term, interest rate, origination and repayment procedure. The loan agreement shall specify the loan objective, types of collateral pledged by the borrower, obligations, rights and liability of parties with respect to making and paying off the loan.</b></p> <p><b>3. Essential terms and conditions of the loan agreement cannot be changed unilaterally by any party to the agreement.</b></p> |

**Civil Code of Ukraine**

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| <p>Article 534. Ranking of cash claims</p> <p>1. In the event that the amount of payment made is not sufficient to settle a cash obligation in full, this amount shall be used to satisfy the creditor's claims according to the following ranking, <b>unless otherwise provided by this agreement:</b></p> <p>1) the reimbursement for the creditor's expenses related to the enforcement of claims ranks first;</p> <p>2) the payment of interest and penalty ranks second;</p> <p>3) the repayment of the principal amount ranks third.</p>   | <p>Article 534. Ranking of cash claims</p> <p>1. In the event that the amount of payment made is not sufficient to settle a cash obligation in full, this amount shall be used to satisfy the creditor's claims according to the following ranking:</p> <p>1) the reimbursement for the creditor's expenses related to the enforcement of claims ranks first;</p> <p>2) the payment of interest and penalty ranks second;</p> <p>3) the repayment of the principal amount ranks third.</p> <p><b>2. The parties shall be entitled to specify a different ranking of the lender's claims in the agreement than that given in Section 1 of this Article unless otherwise provided by this Code or Ukrainian laws.</b></p>   |
| <p>Article 591. Sale of collateral</p> <p>1. Foreclosed collateral shall be sold through public bidding unless otherwise provided by the agreement or by law. The procedure for selling foreclosed collateral through public bidding shall be prescribed by law.</p> <p>2. The opening price of collateral for public bidding shall be determined in the manner provided by the agreement or by law. If foreclosure is based on a court decision, the court may indicate the opening price of collateral in this decision.</p> <p>3. If public bidding is recognized as failed, collateral may be transferred to the pledgee at the opening price, subject to agreement between the pledgee and the pledger, unless otherwise provided by the agreement or by law.</p> <p><b>4. If the amount received from the sale of collateral does not satisfy the pledgee's claims, he shall be entitled to receive the lacking amount from other assets of the borrower, according to the ranking set forth</b></p> | <p>Article 591. Sale of collateral</p> <p>1. Foreclosed collateral shall be sold through public bidding unless otherwise provided by the agreement or by law. The procedure for selling foreclosed collateral through public bidding shall be prescribed by law.</p> <p>2. The opening price of collateral for public bidding shall be determined in the manner provided by the agreement or by law. If foreclosure is based on a court decision, the court may indicate the opening price of collateral in this decision.</p> <p>3. If public bidding is recognized as failed, collateral may be transferred to the pledgee at the opening price, subject to agreement between the pledgee and the pledger, unless otherwise provided by the agreement or by law.</p> <p><b>Deleted.</b></p> |

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| <p><b>in Article 112 of this Code, unless otherwise provided by this agreement and by law.</b></p>   |  |
| <p>Article 1052. Collateral pledged by the borrower</p> <p>1. In the event that the borrower defaults on the obligations provided by the loan agreement with respect to the repayment of the loan and in the event that collateral is lost or impaired due to circumstances beyond the control of the lender, the lender shall have the right to require the early repayment by the borrower of the loan and the payment of the interest due thereon, pursuant to Article 1048 of this Code, unless otherwise provided by the agreement.</p> | <p>Article 1052. Collateral pledged by the borrower</p> <p>1. In the event that the borrower defaults on the obligations provided by the loan agreement with respect to the repayment of the loan and in the event that collateral is lost or impaired due to circumstances beyond the control of the lender, the lender shall have the right to require the early repayment by the borrower of the loan and the payment of the interest due thereon, pursuant to Article 1048 of this Code, unless otherwise provided by the agreement.</p> <p><b>2. The right of the lender set forth in Section 1 of this Article shall not apply if, at the time of the collateral loss or impairment, the borrower has no overdue debt to the lender. In the event that collateral is lost, the borrower shall be required to give the lender collateral of equal value or other collateral, if agreed by the lender.</b></p> |
| <p>Article 1054. Loan agreement</p> <p>1. Under a loan agreement, a bank or another financial institution (the lender) undertakes to give cash (a loan) to the borrower in the amount and on the conditions provided by the agreement, and the borrower undertakes to repay the loan and pay the interest.</p> <p>2. Unless otherwise provided by this paragraph and follows from the essence of the loan agreement, paragraph 1 of this Chapter shall not apply to relations under the loan agreement.</p>                                  | <p>Article 1054. Loan agreement</p> <p>1. Under a loan agreement, a bank or another financial institution (the lender) undertakes to give cash (a loan) to the borrower in the amount and on the conditions provided by the agreement, and the borrower undertakes to repay the loan and pay the interest.</p> <p>2. Unless otherwise provided by this paragraph and follows from the essence of the loan agreement, paragraph 1 of this Chapter shall not apply to relations under the loan agreement.</p> <p><b>3. Essential terms and conditions of the loan agreement are: the subject matter, loan amount, interest rate, origination and repayment procedure.</b></p> <p><b>4. Essential terms and conditions of the loan agreement cannot be</b></p>  |

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|   | <p><b>changed unilaterally by any party to the agreement.</b></p> <p><b>5. In concluding the loan agreement, the lender shall be prohibited from making the conclusion of this agreement dependent on certain circumstances or otherwise encumber its conclusion, including by requiring that services of specific appraisers, notaries, and insurance companies be used.</b></p> <p><b>6. Key economic and legal requirements that arise in concluding the loan agreement shall be disclosed by the lender to the borrower before the agreement is concluded. This information must be provided by the lender in writing and must contain:</b></p> <ul style="list-style-type: none"> <li>- the description of all cash charges and expenses related to cash receipts (a loan);</li> <li>- principles of setting an interest rate under the loan agreement;</li> <li>- the inflation clause provision;</li> <li>- the procedure for making the early repayment of the principal in the event of the borrower's insolvency or default on his obligations under the loan agreement and legal consequences of this default;</li> <li>- details of a license and/or a statement of the inclusion of the lender in the State Register of Financial Institutions or the State Register of Banks;</li> <li>- other conditions, as decided by the lender.</li> </ul> <p><b>7. A failure of the lender to comply with requirements set out in Section 6 of this Article shall be the grounds for recognizing the loan agreement as null and void.</b></p> |
| <p>Article 1056. Refusal to make or receive a loan</p> <p>1. The lender shall have the right to refuse to make the agreed loan to the borrower in whole or in part if bankruptcy proceedings are initiated against the borrower or if there are other circumstances indicating that the loan extended to the borrower will not be repaid when due.</p> <p>2. The borrower shall have the right to refuse to receive the loan in whole</p> | <p>Article 1056. Refusal to make or receive a loan</p> <p>1. The lender shall have the right to refuse to make the agreed loan to the borrower in full or in part if bankruptcy proceedings are initiated against the borrower or if there are other circumstances indicating that the loan extended to the borrower will not be repaid when due.</p> <p>2. The borrower shall have the right to refuse to receive the loan in whole</p>  |

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| <p>or in part by notifying the lender before the prescribed time of making it unless otherwise provided by the agreement or by law.</p> <p>3. In the event that the borrower violates the obligation to use the loan for a special purpose specified in the loan agreement, the lender shall have the right to refuse to continue lending money to the borrower under the agreement.</p>   | <p>or in part by notifying the lender before the prescribed time of making it unless otherwise provided by the agreement or by law.</p> <p>3. In the event that the borrower violates the obligation to use the loan for a special purpose specified in the loan agreement, the lender shall have the right to refuse to continue lending money to the borrower under the agreement.</p> <p><b>4. The refusal of the borrower to change essential term(s) and condition(s) in the effective loan agreement cannot be the grounds for the early termination of lending relations.</b></p>   |
| <p>Article 1056<sup>1</sup>. Interest under the loan agreement</p> <p>1. An interest rate and interest payment procedure under the agreement shall be set out in the agreement on the basis of credit risk, collateral provided, supply and demand in the credit market, term of a loan, discount rate and other factors.</p> <p>2. The interest rate specified in the agreement cannot be increased by a bank, other financial institution unilaterally.</p> <p>3. A provision in the agreement that gives the bank or financial institution the right to change the interest rate unilaterally shall be null and void.</p> | <p>Article 1056<sup>1</sup>. Interest under the loan agreement</p> <p>1. An interest rate and interest payment procedure under the agreement shall be set out in the agreement on the basis of credit risk, collateral provided, supply and demand in the credit market, term of a loan, discount rate and other factors.</p> <p>2. The interest rate specified in the agreement cannot be increased by a bank, other financial institution unilaterally, <b>including in the event of a change in the discount rate of the National Bank of Ukraine.</b></p> <p>3. A provision in the agreement that gives the bank or financial institution the right to change the interest rate unilaterally shall be null and void.</p> |
| <p><b>There is no such article.</b></p>  | <p><b>Article 1056<sup>2</sup>. Securing obligations under the loan agreement</b></p> <p><b>1. The settlement of obligations assumed by the borrower under the loan agreement can be secured in the manner and by means provided in Chapter 49 of this Code.</b></p> <p><b>2. The pledger or his immediate family members shall have a priority right over other persons to buy out the collateral pledged to secure the obligation under the loan agreement if it is offered for sale to meet the</b></p>   |

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|  | <b>pledgee's claims.</b>   |
| <b>There is no such article.</b>   | <p><b>Article 1056<sup>3</sup>. Ranking of cash claims under the loan agreement</b></p> <p><b>1. In the event that cash is received from the borrower to meet the claims of the lender, such claims shall be met according to the following ranking:</b></p> <p><b>1) the repayment of the overdue principal amount of the loan and overdue interest for using the loan ranks first;</b></p> <p><b>2) the repayment of the principal amount and interest for using the loan ranks second;</b></p> <p><b>3) the payment of the fine and late payment fee ranks third.</b></p>   |
| <b>Law of Ukraine “On Consumer Protection”</b>   |  |
| <p>Article 11. Consumer rights in purchasing goods on credit</p> <p>...</p> <p>4. A consumer loan agreement<sup>1</sup> shall be made in writing and one original copy shall be given to the consumer. The burden of proof that one original copy has been given to the consumer shall be upon the lender.</p> <p>The consumer shall not be required to pay the lender any charges, interest or other loan costs that were not specified in the agreement.</p> <p>The consumer loan agreement shall specify:</p> <p>1) the loan amount;</p> <p>2) a detailed breakdown of the total cost of the loan to the consumer;</p> <p>3) a loan issue date or, if the loan is issued by portions, dates and amounts of such loan portions and other terms of making the loan;</p> | <p>Article 11. Consumer rights in purchasing goods on credit</p> <p>...</p> <p>4. A consumer loan agreement shall be made in writing and one original copy shall be given to the consumer. The burden of proof that one original copy has been given to the consumer shall be upon the lender.</p> <p>The consumer shall not be required to pay the lender any charges, interest or other loan costs that were not specified in the agreement.</p> <p>The consumer loan agreement shall specify:</p> <p>1) the loan amount;</p> <p>2) a detailed breakdown of the total cost of the loan to the consumer;</p> <p>3) a loan issue date or, if the loan is issued by portions, dates and amounts of such loan portions and other terms of making the loan;</p> |

<sup>1</sup> Directive 2008/48/EC uses the term “consumer credit agreement” – the translator’s note.

4) the early repayment right;

5) an annual loan interest rate;

6) other terms and conditions provided by law.

**The consumer loan agreement may provide that a loan interest rate may change depending on changes in the discount rate of the National Bank of Ukraine or in other cases. The lender shall notify the borrower of a change in the consumer loan interest rate in writing, within seven calendar days after the date of its change. Any change in the interest rate shall be invalid without such notification.**

5. The provisions of this law regarding unfair terms and conditions in agreements shall apply to consumer loan agreements, specifically such terms and conditions that require the following:

1) to obtain a loan, it is necessary to pledge as collateral the full amount or some part of the amount of the loan or use it in whole or in part as to place a deposit or buy out securities or other financial instruments, except when the consumer is offered the same or higher interest rate on such deposit, securities or financial instruments as his loan interest rate;

2) when entering into the agreement, the consumer is required to make another agreement with the lender or a third party indicated by the lender, except when such agreement is required by law and/or costs under this agreement are expressly included in the total cost of loan to the consumer;

3) changes may be made in any costs under the agreement, **except for an interest rate;**

4) there are rules for changing the interest rate that are discriminatory towards consumers.

4) the early repayment right;

5) an annual loan interest rate;

6) other terms and conditions provided by law.

**Deleted.**

5. The provisions of this law regarding unfair terms and conditions in agreements shall apply to consumer loan agreements, specifically such terms and conditions that require the following:

1) to obtain a loan, it is necessary to pledge as collateral the full amount or some part of the amount of the loan or use it in whole or in part as to place a deposit or buy out securities or other financial instruments, except when the consumer is offered the same or higher interest rate on such deposit, securities or financial instruments as his loan interest rate;

2) when entering into the agreement, the consumer is required to make another agreement with the lender or a third party indicated by the lender, except when such agreement is required by law and/or costs under this agreement are expressly included in the total cost of loan to the consumer;

3) changes may be made in any costs under the agreement;

4) there are rules for changing the interest rate that are discriminatory towards consumers.

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| <p>Article 38. The mortgagee's right to sell the mortgaged property</p> <p>If a court decision or an agreement on meeting the mortgagee's claims (a relevant clause in the mortgage agreement) provides for the mortgagee's right to sell the mortgaged property to any buyer, the mortgagee shall be required to give the mortgagee and all persons who have the legally registered rights or claims to the mortgaged property 30 days' prior written notice of his intention to enter into this agreement. In the event of a failure to meet this requirement, the mortgagee shall be liable to such persons for losses incurred.</p> <p>Within thirty days after the day of receipt of such notice, a person who has the legally registered rights or claims to the mortgaged property shall be entitled to buy the mortgaged property. On the day of receipt by the mortgagee of this notice, the above person shall obtain a priority right to buy the mortgaged property from the mortgagee. If several such notices are received, the right to buy the mortgaged property shall belong to a person who has a higher ranking of its registered rights or claims.</p> | <p>Article 38. The mortgagee's right to sell the mortgaged property</p> <p>If a court decision or an agreement on meeting the mortgagee's claims (a relevant clause in the mortgage agreement) provides for the mortgagee's right to sell the mortgaged property to any buyer, the mortgagee shall be required to give the mortgagee and all persons who have the legally registered rights or claims to the mortgaged property 30 days' prior written notice of his intention to enter into this agreement. In the event of a failure to meet this requirement, the mortgagee shall be liable to such persons for losses incurred.</p> <p>Within thirty days after the day of receipt of such notice, a person who has the legally registered rights or claims to the mortgaged property shall be entitled to buy the mortgaged property. On the day of receipt by the mortgagee of this notice, the above person shall obtain a priority right to buy the mortgaged property from the mortgagee. If several such notices are received, the right to buy the mortgaged property shall belong to a person who has a higher ranking of its registered rights or claims. <b>The priority right to buy out the mortgaged property shall belong to the mortgagor and his immediate family members.</b></p> |
| <p>Article 41. Selling the mortgaged property through public bidding</p> <p>The mortgaged property foreclosed on the basis of the court decision or the notary's enforcement inscription shall be sold, unless otherwise provided by the court decision, through a public bidding, within the framework of the enforcement procedure specified in the Law of Ukraine "On Enforcement Proceedings", subject to requirements of this Law.</p> <p>The mortgaged property shall be sold in a town where it is located, and if the mortgaged property is located outside of town, it shall be sold in the nearest town or district center in the territory under the jurisdiction of the state enforcement office responsible for enforcing the court decision or the notary's enforcement inscription on foreclosure on the mortgaged property.</p>  | <p>Article 41. Selling the mortgaged property through public bidding</p> <p>The mortgaged property foreclosed on the basis of the court decision or the notary's enforcement inscription shall be sold, unless otherwise provided by the court decision, through a public bidding, within the framework of the enforcement procedure specified in the Law of Ukraine "On Enforcement Proceedings", subject to requirements of this Law.</p> <p>The mortgaged property shall be sold in a town where it is located, and if the mortgaged property is located outside of town, it shall be sold in the nearest town or district center in the territory under the jurisdiction of the state enforcement office responsible for enforcing the court decision or the notary's enforcement inscription on foreclosure on the mortgaged property.</p>  |

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|   | <p><b>The mortgagee and his immediate family members shall have the priority right to buy out the mortgaged property if it is sold through public bidding.</b></p>   |
| <p>Article 47. Formalizing results of public bidding and distributing proceeds of the sale of the mortgaged property</p> <p>...</p> <p><b>If the amount received from the sale of the mortgaged property does not satisfy the mortgagee’s claims, he shall be entitled to receive the remaining amount from other property of the debtor in the manner provided by law.</b></p> | <p>Article 47. Formalizing results of public bidding and distributing proceeds of the sale of the mortgaged property</p> <p>...</p> <p><b>Deleted.</b></p>   |
| <p><b>Law of Ukraine “On Collateral”</b></p>  |  |
| <p>Article 20. Foreclosure on the mortgaged property</p> <p>...</p> <p>The mortgaged property under foreclosure shall be sold by the state enforcement officer based on the enforcement order, court or a commercial court order, the notary’s enforcement inscription in the prescribed manner unless otherwise provided by this Law or agreement.</p>                         | <p>Article 20. Foreclosure on the mortgaged property</p> <p>...</p> <p>The mortgaged property under foreclosure shall be sold by the state enforcement officer based on the enforcement order, court or a commercial court order, the notary’s enforcement inscription in the prescribed manner unless otherwise provided by this Law or agreement.</p> <p><b>In the event of selling the mortgaged property under foreclosure, the mortgagee and his immediate family members shall have the priority right to buy out such property.</b></p> |

**Member of Parliament of Ukraine**

**N.Yu. Korolevska**