

## **LAW OF UKRAINE**

### **On Amendments to Certain Legislative Acts of Ukraine Regarding the Settlement of Relations between Creditors and Consumers of Financial Services**

Verkhovna Rada of Ukraine decrees:

I. To amend the following laws of Ukraine:

1. In Article 109 of the Housing Code of Ukraine (Official Bulletin of Supreme Council of the Ukrainian SSR, 1983, Annex to No. 28, p. 573):

1) the second sentence of Paragraph second shall be reworded as follows: "Permanent residential premises provided to the person that is evicted should be specified in the court's ruling";

2) the second sentence of Paragraph three shall be reworded as follows: "After the creditor makes decision to foreclose the mortgaged house or residential premises by way of out of the court settlement based on a contract, all inhabitants are obliged at a written request of the mortgagee or new owner to vacate voluntarily the house or residential premises within one month from the date of this request, unless the parties agreed on a longer term".

2. In the Criminal Code of Ukraine (Official Bulletin of Verkhovna Rada of Ukraine, 2001, No. 25-26, p. 131):

1) from the first Paragraph of Article 222 exclude the words "a private entrepreneur or a founder (owner) or officer of a business entity";

2) title and Paragraph first of Article 388 shall be reworded as follows:

"Article 388. Illegal actions with seized, pledged, attached property or property subject to confiscation

1. Embezzlement, disposal, concealment, substitution, damage, destruction of property or other unlawful activities with seized, pledged, attached property or violation of restrictions (encumbrances) of the right to use such property committed by the person to whom this property is entrusted, as well as performance by a

representative of the bank or other financial institution of banking operation with funds that are seized".

3. In the Civil Code of Ukraine (Official Bulletin of Verkhovna Rada of Ukraine, 2003, No. No. 40-44, p. 356):

1) Article 104 shall be supplemented with Paragraph fourth as follows:

"4. Features of termination of a bank as a legal entity shall be established by the law";

2) in Article 107:

Paragraph first shall be reworded as follows:

"1. Creditor may demand from a legal entity to be terminated, to perform obligations, which are not secured, or early termination of the obligation or secure fulfillment of obligations, except the cases provided by the law";

Paragraph fifth shall be replaced by two Paragraphs as follows:

"5. A legal entity – successor that founded in result of division, shall bear subsidiary liability for obligations of the terminated legal entity, which according to separation balance sheet have been transferred to another legal entity - successor. If legal entities - successors founded in result of division are more than two, they shall jointly and severally bear subsidiary liability.

6. If successors of a legal entity are several legal entities and it is impossible to determine the particular successor of specific obligations of the terminated legal entity, legal entities – successors shall jointly and severally bear liability before creditors of the terminated legal entity. Shareholders (founders) of the terminated legal entity, which according to the law or constituent documents were liable for its obligations, shall be liable for obligations of the successors that have arisen prior to termination of the legal person to the same extent if a greater extent of liability of shareholders (founders) for obligations of successors is not established by the law or their constituent documents";

3) Paragraph second of Article 109 shall be replaced by three Paragraphs as follows:

"2. After the decision on separation, shareholders of the legal entity or the authority which made decision on separation, shall draft and approve the separation balance sheet.

The court, which made decision on separation, in its decision shall determine a shareholder of the legal entity or the supreme body of the legal entity (owner), which is obliged to draw up and approve the separation balance sheet.

3. A legal entity formed as a result of separation, shall be subsidiary liable for obligations of the legal entity wherefrom the separation was made, which according to the separation balance sheet were not transferred to the legal entity formed as a result of separation. The legal entity wherefrom the separation was made, shall bear subsidiary liability for obligations that according to the separation balance sheet were transferred to the legal entity formed as a result of separation. If as a result of separation there were formed two or more legal entities, they shall bear subsidiary

liability jointly with the legal entity wherefrom the separation was made, jointly and severally.

4. If after separation it is impossible to define particular duties of the entity under a separate obligation that the legal entity before the separation, the legal entity wherefrom separation was made, and legal entities formed as a result of separation, are jointly and severally liable to the creditor for such obligations";

4) Paragraph third of Article 110 shall be reworded as follows:

"3. If value of property of the legal entity is insufficient to satisfy the creditors' claims, the legal entity shall undertake all necessary measures to restore solvency or recognize as bankrupt";

5) Article 627 shall be supplemented with Paragraph second as follows:

"2. Contracts with an individual - consumer shall take into account the requirements of the legislation on protection of consumer rights ";

6) Article 1054 shall be supplemented with Paragraph third as follows:

"3. The Law shall establish particular features of the regulation of relations in the contract for consumer credit";

7) Article 1056<sup>1</sup> shall be reworded as follows:

"1. The interest rate on credit may be fixed or variable. Type of interest rate shall be determined by the credit agreement.

2. Amount of interest rate, type of interest rate (fixed or variable) and payment procedure under the credit agreement shall be defined in the contract depending on the credit risk, provided security, supply and demand of the credit market, period of credit, amount of the discount rate and other factors.

3. Fixed interest rate shall be constant during the entire term of the credit agreement. Amount of the fixed interest rate provided in the contract cannot be increased by the bank unilaterally. Clause of the agreement concerning right of the bank to change amount of the fixed interest rate unilaterally shall be null and void.

4. In case of variable interest rate the creditor unilaterally at a certain intervals set in the credit agreement shall have the right to increase or shall be obliged to decrease the interest rate in accordance with the terms and procedure established by the credit agreement. The creditor must notify in writing the borrower, guarantor or other person obligated by the contract about change of the interest rate not later than 15 calendar days before the date on which the new rate will apply. The credit agreement shall set out the procedure for calculating variable interest rate applying the index agreed by the parties. Procedure for calculating the variable interest rate shall allow determining the exact amount of the interest rate on the credit at any time during the term of the credit agreement. The creditor may not change the procedure for calculating the interest rates established by the credit agreement without consent of the borrower.

5. The index, which is used in the formula for determination of the variable interest rate, must meet the following requirements:

1) current value of the index must be periodically, but at least once a month, published in the media or made public in other regular public sources of information. The credit agreement shall contain a reference to the source of information about the corresponding index;

2) the index should be based on objective indicators of the financial sector, allowing determining the market price of credit resources;

3) value of the index should be determined by an independent authority with the recognized business reputation in the market of financial services.

6. If applying the variable interest rate, the credit agreement must determine the maximum increase of the interest rate";

8) Paragraph first of Article 1277 shall be reworded as follows:

"1. In absence of heirs by will and by law, denial the right to inherit, waiver of inheritance, as well as disclaimer of its adoption, the local authority at the place of inheritance must apply to the court for recognition of inheritance as escheated".

4. In the Law of Ukraine "On Restoration of Borrower's Solvency or Its Recognition as Bankrupt" (Official Bulletin of Verkhovna Rada of Ukraine, 1999, No. 42-43, p. 378; 2002, No. 33, p. 235; 2003, No. 28, p. 210; 2004, No. 6, p. 38; 2006, No. 1, p. 18, No. 8, p. 88):

1) in Article 1:

definition of the term "subject of bankruptcy," shall be supplemented with the words "as well as individuals - entrepreneurs for monetary obligations, arisen directly for the individual on grounds that do not relate to carrying out entrepreneurial activities by such person";

sentence second in definition of the term "creditor" shall be reworded as follows: "Competitive creditors - creditors under claims against the debtor that arose before initiation of bankruptcy proceedings";

sentence second in definition of the term "financial obligation" shall be supplemented by the words "obligations of the debtor - an individual-entrepreneur arisen directly for the individual on grounds that do not relate to carrying out entrepreneurial activities by such debtor ";

definition of the term "moratorium on satisfaction of creditors' claims" after the term "the debtor" shall be supplemented with the term "in respect of whom a bankruptcy case is instituted";

2) Paragraph fifth of Article 3<sup>1</sup> after Clause fourth shall be supplemented by a new clause as follows:

"Inform the creditors' committee and the creditors whose claims are secured, about time, place and conditions of sale of the pledged property by a registered letter with return receipt requested ".

Therefore, Clause fifth shall be considered to be Clause sixth;

3) Paragraph fifth of Article 7 shall be supplemented with Paragraph sixth as follows:

"The debtor for failing to comply with this Section shall bear liability under the law"";

4) in Article 11:

Paragraph first:

shall be supplemented with Clause third as follows:

"The judge, after making a ruling on initiation of proceedings in a bankruptcy case, not later than the second day following the day of the ruling shall pass text of the ruling for official publication on the official website of the judicial power of Ukraine";

Paragraph fifth shall be reworded as follows:

"5. In order to identify all creditors and persons wishing to participate in reorganization of the debtor, the judge at the preparatory meeting shall pass a ruling and officially publish it. Official publication of text of the ruling should contain the full name of the debtor, his mailing address, bank details, name and address of Commercial Court, case number, information about administrator of the property";

Paragraph the fifteenth shall be reworded as follows:

"15. After official publication of the ruling as to institution of bankruptcy proceedings on the official website of the judicial power of Ukraine, all creditors regardless of the deadline for fulfillment of the obligations shall be eligible to submit monetary claims against the debtor in accordance with Article 14 of this Law ";

5) Article 14 shall be supplemented with paragraph fourth as follows:

"4. If a creditor is recognized as a competitive, he shall be entitled to receive from administrator of the property the information regarding claims of other creditors recognized by the debtor and/or administrator of the property.

Claims of the competent creditors against which there are objections of the debtor or other creditors shall be considered by the Commercial Court before making a decision on approval of register of claims.

According to results of consideration of these claims, the Commercial Court shall by a ruling, recognize or reject (in whole or in part) claims of such creditors. The ruling may be appealed in the established procedure ";

6) Paragraph seventh of Article 47 shall be reworded as follows:

"7. If individual-entrepreneur is recognized as a bankrupt, liquidation mass shall not include property of the individual-entrepreneur, which according to Ukrainian legislation cannot be foreclosed as well as property pledged on grounds that do not relate to carrying out entrepreneurial activities by such person";

7) in Article 48:

Clause first of Paragraph first shall be supplemented with the term "and property pledged on grounds that do not relate to carrying out entrepreneurial activities by such person ";

in Paragraph fifth:

Clause third shall be supplemented with the term "except for obligations that do not relate to carrying out entrepreneurial activities by such person";

Clause fourth shall be supplemented with the term "and claims that do not relate to carrying out entrepreneurial activities by such person";

8) Clause second of Paragraph second of Article 49 after the term "enforcement of child support" shall be supplemented with the term "claims on the property pledged on grounds that do not relate to carrying out entrepreneurial activities by such person";

9) in Article 51:

first sentence of Paragraph second shall be supplemented with the term "shall officially publish the ruling on recognition of the liquidating debtor as a bankrupt";

in Paragraph three the term "publication of announcement" shall be replaced with the term "official publication of the ruling".

5. Paragraph third of Article 61 of the Law of Ukraine "On Banks and Banking Activity" (Official Bulletin of the Verkhovna Rada of Ukraine, 2001, No. 5-6, p. 30, as amended by the Law of Ukraine of February 15, 2011 No. 3024-VI) after the words "contracts by the bank" shall be supplemented by the words "including about waiver of claim to the customer. "

6. In the Law of Ukraine "On Mortgage" (Official Bulletin of the Verkhovna Rada of Ukraine, 2003, No. 38, p. 313; 2006, No. 13, p. 110; 2011, No. 19–20, p. 142):

1) Sentence third of Paragraph first of Article 35 shall be reworded as follows: "If the mortgagee's claim is not satisfied within the set term, the mortgagee shall be entitled to decide on foreclosure of the mortgaged property by out of the court settlement based on the contract";

2) Paragraph second of Article 39 shall be reworded as follows:

"Simultaneously with decision on foreclosure of the mortgaged property, the court at request of the mortgagee shall decide on eviction of inhabitants under the reasons stipulated by the law, if subject of the mortgage is a residential house or residential premises";

3) Paragraph second of Article 40 after the term "mortgaged residential house or residential premises" shall be supplemented with the term " by way of out of the court settlement based on a contract";

4) in Article 49:

Paragraph second shall be supplemented with sentences as follows: "If the mortgagee did not exercise the right set in the Paragraph first of this Article, holding of the third public sales shall according to results of the second public sales be assigned in the same manner. Starting selling value of the subject of mortgage at the third public sales may be reduced to not more than 50 percent of the original value of the property";

in paragraph third the word "second" shall be replaced with the word "third".

7. In the Law of Ukraine "On Security of Creditors' Claims and Registration of Encumbrances" (Official Bulletin of the Verkhovna Rada of Ukraine, 2004, No. 11, p. 140):

1) Paragraph first of Article 24 after the words "court's ruling" shall be supplemented by the words "executive inscription by a notary";

2) Paragraph first of Article 26 shall be supplemented with Subparagraph 5 as follows:

"5) sale of the pledged property based on executive inscription by a notary".

8. In Article 11 of the Law of Ukraine "On Protection of Consumers' Rights (Official Bulletin of the Verkhovna Rada of Ukraine, 2006, No. 7, p. 84):

Paragraph first shall be supplemented with clause third as follows:

"Provision (obtaining) of consumer credit in foreign currency in the territory of Ukraine is prohibited";

Clause "e" of Subparagraph 2 of Paragraph second shall be reworded as follows:

"e) approximate total value of the credit (in percentage value and monetary value) taking into account the interest rate on the credit and value of all services (registrar's, public notary's, insurer's, appraiser's, etc.) associated with obtaining of the credit and signature of the consumer credit contract";

in Paragraph fourth:

Subparagraph second after the word "interest" shall be supplemented with the word "commission";

after Subparagraph second shall be supplemented with a new subparagraph as follows:

The creditor shall be prohibited to provide in the consumer credit agreement for any fees, interest, commissions, charges, etc. for activities that are not a service according to definition by this Law. Provision of the consumer credit contract which provides for any payment for shall be null and void".

Therefore, Subparagraphs third – tenth shall be considered to be Subparagraphs fourth – eleventh;

Subparagraph sixth shall be reworded as follows:

"2) A detailed description of the total value of credit for the consumer (in percentage value and monetary value) taking into account the interest rate on the credit and value of all services (registrar's, public notary's, insurer's, appraiser's, etc.) associated with obtaining, service, repayment of the credit and signature of the consumer credit contract";

Subparagraph tenth shall be replaced by two Subparagraphs as follows:

"6) conditions for early termination of the contract;

7) other conditions stipulated by the laws".

Therefore, Subparagraph eleventh shall be considered to be Subparagraph twelfth;

Subparagraph twelfth shall be reworded as follows:

"It is prohibited anyhow to complicate reading by the consumer of text of the detailed description of the total value of consumer credit, specified in the consumer credit contract or in annex to such contract, including by printing it in font size smaller than a size of the main text font, merge of its color with the background color";

Paragraph eighth shall be supplemented with Subparagraphs third – fifth as follows:

"Consumer in case of early repayment of a consumer credit shall pay interest on the credit and value of all services related to servicing and repaying of the credit for the period of actual use of the credit.

Creditor shall be prohibited to refuse to accept the consumer's payment in case of early repayment of consumer credit.

Creditor shall be prohibited to stipulate any additional charge for the consumer associated with early repayment of consumer credit. Provision of the consumer credit contract, which provides for payment any additional fee by consumer in case of early repayment of consumer credit shall be null and void";

in Paragraph tenth:

Clause first shall be reworded as follows:

"1) delay of payment of the credit and / or interest for at least one calendar month, and on consumer credit secured by mortgages and consumer credits for housing - for at least three calendar months, or";

sentence first of Subparagraph sixth shall be reworded as follows:

"If a creditor based on provisions of the consumer credit contract, demands to make not matured payments or to repay the consumer credit, such payments or repayment of consumer credit may be made by the consumer within thirty calendar days, but under a consumer credit, secured by a mortgage and on consumer credit for housing – sixty calendar days from receipt of such demand from the creditor";

shall be supplemented with Paragraphs twelfth and thirteenth as follows:

"12. The creditor shall have the right provided the consumer's consent to reorganize the debt under a consumer credit contract.

Reorganization, in particular, shall be fulfilled by way of:

1) giving to borrowers a payment holiday for principal amount of the consumer credit contracts for a term not exceeding three years;

2) extension of the consumer credit contract subject to effective limitations of banks and particular financial situation of the borrower;

3) changes in the mechanism for interest calculation so that the share of monthly credit service payments will not exceed 35 percent of the total monthly family income;

4) division of the existing credit obligations in foreign currency under the consumer credit contract to:

obligation secured by mortgage in the amount of the credit balance at the time of reorganization, expressed in hryvnia at the exchange rate as of the time of obtaining of the credit;

obligation not secured by mortgage in the amount of difference between the credit balance at the exchange rate of hryvnia as of reorganization and the credit balance in hryvnia at the exchange rate in effect as of obtaining of the credit, which is fully satisfied at the end of the term of consumer credit contract.

Bank shall have the right based on contracts reorganized according to this paragraph to release borrowers from paying any penalties for late fulfillment of credit contracts, appeared before the date of such reorganization.

If a borrower meets in full and timely his reorganized obligations under the credit contract for three years from reorganization of the debt, the commercial bank shall have a right to annual decrease by 0.5 percent of the principal amount of outstanding debt over the next five years, attributing this amount to expenditures of the bank.

13. Creditor must inform the customer about assignment of their rights under the consumer credit contract to third parties".

## II. Final Provisions

1. This Law shall come into force on the day following the date of its publication.

2. This Law shall not apply to credit contracts signed before the date of enactment of this Law.

3. The Cabinet of Ministers of Ukraine and National Bank of Ukraine shall, within one month from the date of enactment of this Law, bring their regulations in compliance with this Law.

President of Ukraine

V. YANUKOVYCH

City of Kyiv  
September 22, 2011  
No. 3795-VI